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Canada, Co-operative, Roy. Comm. on
the
Co-operative Movement in Canada

ROYAL COMMISSION
ON
CO-OPERATIVES

1945

PROCEEDINGS
(OFFICIAL REPORT)

VOLUME No. XXIX

PLACE Ottawa

DATE May 1, 1945

PAGES 7266 - 7434



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ROYAL COMMISSION ON CO-OPERATIVES

Ottawa, Tuesday, May 1, 1945

VOLUME XXIX

(Pages 7266 - 7434)

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ROYAL COMMISSION ON COOPERATIVES

The Commission appointed to inquire into the present position of cooperatives in the matter of income and excess profits tax, organization and business methods and operations, and the comparative position of persons engaged in business directly competitive therewith, met in Ottawa, on Tuesday, May 1, 1945.

PRESENT:

The Hon.Mr.Justice **ERROL M. McDOUGALL**, Chairman

B.N.ARNASON)	
G.A.ELLIOTT	)	Commissioners
J.M.NADEAU)	
J.J.VAUGHAN)	

Eugene T.Parker,K.C.	Counsel
Major H.D.Woods)	Associate
J.A.Chapdelaine)	Registrars
Colonel G.W.Ross	Executive Secretary

APPEARANCES:

R.H.Milliken,K.C	)	Saskatchewan Cooperative
	)	Producers Limited,
	)	(Saskatchewan Wheat Pool)
M.M.Porter,K.C	)	Alberta Wheat Pool
Ben S.Plumer)	" " "
H.S.Scarth,K.C.	)	Manitoba Pool Elevators
W.J.Parker)	" " "
G.H.Steer,K.C.	)	United Grain Growers Limited
H.L.Griffin)	" " " "
J.E.Brownlee)	" " " "
W.H.Howard,K.C.	)	Northwest Line Elevators
Cecil Lamont)	" " "
W.P.Fillmore)	" " "
W.B.Francis	)	Group of Cooperative Associations

Ottawa,
Tuesday,
May 1, 1945.

The Commission met at 10 a.m., Mr. Justice McDougall presiding.

MR. PARKER: I think we are ready to proceed with the brief of the North-West Line Elevators Association, which is in charge of Mr. Howard. I understand from Mr. Howard that he does not propose to read the entire brief but to read only certain paragraphs.

THE CHAIRMAN: We have all read it.

MR. SCARTH: There is one point that rather concerns us, Mr. Chairman. A large number of these statements of fact, as you will see from the opening page of the brief, are, I take it, largely conjecture because they say that in respect of some of them they are ignorant, while so far as others are concerned they hope to establish them through, perhaps, cross-examination. I do not see how the witness can establish facts of which he has no personal knowledge. I understand now from Mr. Howard that the brief will not be read in full.

THE CHAIRMAN: So I understand. Do you wish to have it read in full?

MR. SCARTH: Not particularly, unless the witness is going to swear that the contents are true to his knowledge. If so, I can have no objection; but it seems to me that my learned friend is mixing questions of argument and fact.

THE CHAIRMAN: What you are doing now, Mr. Scarth, is arguing. The responsibility for establishing the brief is on Mr. Howard. I think you are rather anticipating difficulties.

MR. SCARTH: I want to make our position clear.

THE CHAIRMAN: I think I will allow Mr. Howard to go ahead and do what he proposes.

MR. HOWARD: As already indicated, my Lord, we do not propose to read large sections of this brief because we think it would involve a lot of repetition and unnecessarily delay the Commission. What I should like to do is to put Mr. Lamont, the President of the North-West Line Elevators Association, in the box to indicate the authority for the brief and to cover a couple of matters of fact which are not otherwise covered and then have him testify that, to the best of his knowledge and belief, the facts alleged are true, subject to corrections which I shall make and subject to proof that is going to be provided by Mr. Thompson in respect of certain tax matters. After reading the brief my intention is, subject to your approval, to put Mr. Thompson in the box and ask him to give supplementary testimony required, as we think, to complete our submission. Then if questions arise which Mr. Lamont feels he is unable to answer because they relate to details of elevator operations or to the history of the trade and matters of that kind, I have here two officials of the North-West Line Elevators who will, if desired, go into the box--one, Mr. Reid, to deal with matters relating to the operation of country elevators, and the other, Mr. Hayles, to deal with matters relating to terminal operations. If that meets with your approval that is the manner in which we shall proceed.

MR. MILLIKEN: Frankly, Mr. Chairman, I confess I do not understand what is being done. If I heard Mr. Howard correctly, he is saying that when it comes to a question

of figures they will put an auditor into the box to prove information regarding the pools. Surely the people best qualified to give that kind of information are the pools themselves. Here for example is a statement on page 8 of the brief. I do not care whether Mr. Thompson swears it is right or not. It is false, and it has already been dealt with by the pools.

THE CHAIRMAN: That is a matter of argument, Mr. Milliken.

MR. MILLIKEN: I do not think it is.

THE CHAIRMAN: Have you ever heard of a trial in which one witness did not say that a thing was white while the other held it was black.

MR. MILLIKEN: This is not a trial, sir. What is bothering me is this. What are we doing to-day? Are we having somebody undertake to tell you something about the operation of the pools which you cannot get in any other way? Is there anything that we are trying to conceal about it? Surely these witnesses cannot know as much about the pools as our witnesses know.

THE CHAIRMAN: We are here to get information, Mr. Milliken. Mr. Howard tells us the information is here and will be established in a certain manner and your answer is, "That is false". It is a matter of argument.

MR. MILLIKEN: As a matter of fact, starting at page 8 and continuing down to the bottom of page 10, the brief deals with the Saskatchewan pools, and as I have checked it over there is only one statement in these three pages that has not already been proved by the pools either by examination or by indirect examination before the Commission. Why should we waste time putting all

this in again? What for? I must confess I am at a loss to understand what is going in.

THE CHAIRMAN: It is hard to decide what the brief is until we have heard it.

MR. MILLIKEN: I am prepared to concede that these paragraphs have been proved.

THE CHAIRMAN: Mr. Howard will establish them again, if they are.

MR. MILLIKEN: Why go through the whole brief to do that again? I have gone through everything about Saskatchewan and we have already established 90 per cent of the statements contained here.

THE CHAIRMAN: He proposes not to read the entire brief, and that has not been the case in every submission made.

MR. MILLIKEN: But the whole brief is going in. If only those parts which he reads are put in I shall be satisfied.

THE CHAIRMAN: Mr. Howard will have to read the whole brief if you insist, Mr. Milliken.

MR. MILLIKEN: We are having two briefs on the same thing.

MR. PARKER: That is all the better, is it not?

MR. MILLIKEN: I think it is an amazing undertaking, for somebody outside the organization to prove what we proved ourselves.

THE CHAIRMAN: I do not get your point at all, Mr. Milliken. Mr. Howard is going to try to make his case, as you and Mr. Scarth tried to make yours, and argument will take place, I have no doubt, as to deficiencies in his brief.

MR. MILLIKEN: The case he is making is proving what we have done.

THE CHAIRMAN: But you cannot direct his case, Mr. Milliken.

MR. MILLIKEN: This deals with the set-up of the three pools and what they have done.

MR. PARKER: Is it not all true?

MR. MILLIKEN: It is already proved.

THE CHAIRMAN: I am not going to restrict Mr. Howard any more than I restricted any other counsel.

MR. MILLIKEN: I am not suggesting that he should be restricted, Mr. Chairman, but this is the first time it has happened that someone else has come in to prove what has already been put in by a co-operative. They may come to disprove, it but this is the first time anyone has come to prove it.

THE CHAIRMAN: We will see how Mr. Howard gets along.

CECIL A. R. LAMONT

President, North-West Line
Elevators Association,
having been duly sworn
testified as follows.

BY MR. HOWARD:

Q. What is your occupation? A. President of the North-West Line Elevators Association.

Q. Will you explain what has transpired in respect of the authorization of this brief for submission by the association? A. A meeting of the directors of the association authorized the Executive to make plans to appear before the Commission, to engage counsel and submit information to counsel for the preparation of a

brief which was subsequently submitted to the board of Directors and to the member companies of the association involved, and the brief was approved first in draft form and in its final form was approved by the directors and the member companies.

Q. Do you feel you have authority from all the companies whose names were given in the summary of submissions to present this brief on behalf of the association, using their names in that connection?

A. Yes, sir.

Q. Counsel for the Commission suggests that perhaps the Commission would like to have a little information as to just what the North-West Line Elevators Association is, as well as its purpose and function. A. It is an organization incorporated by special Act of the Manitoba Legislature dating back to 1899 for the purpose of carrying on various services for the member companies.

Q. In order to provide proof for the Commission of certain allegations made here as to the numbers of elevators owned by the different organizations, will you produce for the Commission a copy of the report of the Grain Commissioners for the year ended July 31, 1944?

A. This is a list of grain elevators in the western and eastern inspection divisions issued by the Board of Grain Commissioners for Canada.

Q. What is the present value of investments in elevators owned by members of your association?

A. Approximately \$65,000,000.

Q. Subject to the corrections which, as you know, I have to make in the brief as I read it, and subject to

evidence to be provided in respect of the allegations contained in paragraphs 3 and 4 on pages 38 and 39, are the statements of fact contained in this brief, subject to those qualifications, to the best of your knowledge and belief true? A. They are.

MR. HOWARD: My Lord, if it meets with your approval I suggest that Mr. Lamont be allowed to sit down for the time being. This brief opens with introductory material on page 1 and the top half of page 2 which I think it is unnecessary to read. Then commencing in the middle of page 2 you have material relating to the business of operating grain elevators which, in view of information we have already, it is unnecessary to read. Then we come to page 4 under "Facts regarding the pppls", and I see no necessity of reading what appears on that page. On page 5 we come to our conception of the facts in relation to the organization and operation of the Alberta pool. As already intimated, I do not propose now, unless it be desired, to read this. I wish however to state that although we have carefully considered the submission by the Alberta pool we cannot accept their argument to the effect that the marketing agreements are still in force except as to compulsory contract pooling. Our opinion is the same as that of the Saskatchewan pool namely that these contracts are terminated except in so far as they provide something in the nature of an historical record of the terms and conditions upon and subject to which the commercial elevator deductions were made from remittances to pool members. On page 8 you have our conception of the facts in relation to the Saskatchewan pool, which it seems to me unnecessary to read, and on page 11 we

commence the same recapitulation in respect of the Manitoba pool. In that regard I wish to state to the Commission that we do not accept the point of view of the Manitoba pool to the effect that Manitoba Pool Elevators is nothing but the agent or trustee for the member associations. In our opinion the company is a separate and distinct legal entity, owing corporate property and carrying on business for the purposes of profit or gain. It seems clear to us that a careful review of the relevant statutes and the pertinent agreements makes this apparent. There are, for example, undertakings and agreements of the Manitoba Pool Elevators which could be given or made by it only as principal acting for its own account. The elimination of the word "limited" from the name of Manitoba Pool Elevators affords a somewhat amusing sidelight of the tax consciousness of this pool. I think you may feel assured that if this company became financially involved, as did its predecessor, the theory of limited liability would be asserted, despite the disappearance of the word "limited" from its name and despite assertions now made that it is only agent or trustee.

That brings us to page 14, in dealing with "joint activities and ventures of the pools." It seems to be unnecessary to read that to the Commission. On page 16 we come to the general head, "Business methods and operations of the pools" and a sub-heading "The capital of the pools - how it was raised." In view of the evidence which has been given your Commission on that subject, I do not propose to read what appears on pages

16 and 17. On page 18 appears a quotation from a circular. I am afraid I shall have to ask you to ignore that, because counsel for the Saskatchewan Pool has indicated to me that if that circular issued it was issued without any authority of the directors or top executives of the Saskatchewan Pool, and therefore they cannot recognize it as committing them. Is that a fair statement?

MR. MILLIKEN: I think that is correct.

MR. HOWARD: You may delete that; I cannot support it. At the bottom of page 18 under the heading "Internal administration" there is a paragraph which I would emphasize.

"The business and affairs of each of the pools are under the control of its directors. These directors have the powers and authority usually vested in company directors and are, subject to a minor exception in the case of the Manitoba Pool, elected by representatives of the members. There have been variations between the pools and during the years since 1930 in respect of the qualifications of members to vote for the election of directors."

That is not, as it reads, strictly an accurate statement. It requires minor modification because evidence was given here to the effect that in one or other of the pools--I forget which--the power of the directors in respect of the payment of patronage dividends was subject to the ratification or approval of the delegates. The status of delegates is difficult to determine. It seems to us that delegates who have that type of power are in effect pseudo directors. They

are not shareholders. They have some kind of delegated authority from the members as a whole, and I think that when they function in that way they should be regarded as a species of director. I propose in later sections of the brief to refer to directors, and when I use the word "directors" in relation to the pools, and make certain assertions respecting them, you must bear in mind that I have offered this explanation. It is subject to the qualification I have just mentioned in respect of a certain diminution of the wide powers of directors in a particular case. The details as to how membership was obtained in the pools, and how it varied from time to time, are contained on page 19, which it is unnecessary to read. On page 20 you have a general heading "Litigation with Minister of National Revenue". Our point of view in respect of that litigation is reflected in the last paragraph which I wish to read. The rest I do not propose to read:

"This judgment has no application to what has transpired since the pools abandoned the business of contract pooling nor has it any application to income and profits from time to time earned or made by a pool through the investment or other use or employment of those reserves or other moneys."

(Brief submitted on behalf of the North-West Line Elevators Association.)

"You have been entrusted with several tasks under the above mentioned Order in Council.

"These are, first, to inquire into various matters pertaining to co-operatives; second, to inquire into the comparative position in relation to taxation under the

Income War Tax Act and The Excess Profits Tax Act, 1940, of persons engaged in any line of business in direct competition with co-operatives; third, to report all pertinent facts for determining a fair and equitable basis for the application of the Income War Tax Act and The Excess Profits Tax Act, 1940, to co-operatives and to persons other than co-operatives in respect of methods of doing business analogous to co-operative methods; and fourth, to make recommendations 'for the amendment of existing laws' as you 'consider to be justified in the public interest'.

"The members of this Association whose names were disclosed in our Summary of Submissions dated December 30th, 1944, have a direct interest and vital concern in the foregoing matters in so far as they pertain to the operation of grain elevators.

"This being so, we submit this brief for your consideration.

Preliminary

"There are certain points we must make clear at the outset, namely:

1. Wherever used in this brief, unless the context otherwise requires, the word 'co-operative' is used in the same extended sense as in the above mentioned Order in Council.

2. In the course of this brief, we shall necessarily make statements of fact in support of our representations despite the obvious fact that, at the time of preparation of this brief, we have no way of knowing whether all of the facts alleged by us will be proved to your Commission.

3. You may be assured, however, that all facts alleged

by us are, to the best of our knowledge and belief, true and, to the extent that they relate to co-operatives engaged in the operation of grain elevators, readily provable by the testimony of officers or employees of the co-operatives concerned respectively or by the books and other records which such persons are capable of producing for your examination.

4. We have no doubt that, in the course of your proceedings, evidence will be obtained in respect of matters of which we are now uncertain or ignorant but which will be relevant or pertinent to our representations or to the interests of our members. We must, therefore, reserve the right to supplement this brief at any time or from time to time, during the course of your proceedings, in order to direct your attention to the bearing of such evidence upon the representations made in this brief or to submit to you further representations.

The Business of Operating Grain Elevators

"The members of this Association and the 'co-operatives' which are the direct competitors of our members are engaged in the operation of two kinds of grain elevators - 'country' and 'terminal'.

"These country elevators are located along the railway lines throughout the provinces of Alberta, Saskatchewan and Manitoba; and the terminal elevators are located at the head of the Great Lakes and the Pacific Coast.

"For an explanation of the essential part which these grain elevators play in the marketing of Canadian grain reference is made to the Report of the Royal Grain Inquiry Commission (Honourable Mr. Justice Turgeon,

Chairman) made pursuant to Order in Council (P.C. 774) dated May 1st, 1923. This report was submitted, under date of January 7th, 1925, to the then Minister of Trade and Commerce, and is of public record.

"For the purposes of this brief, it seems necessary only to refer to a few general statements made in such report.

"Apropos of country elevators, this report states at page 10:

'We propose in the first place to give our attention to the problems of the farmer who deals with the country elevator, because these elevators handle the great bulk of the grain grown in Canada, and the relations which exist between their operators and the producers are consequently of greater importance than anything else at this initial stage of the marketing process. The country elevator performs a double function; it is a warehouse where the farmer may have his grain weighed, stored, cleaned (in some cases) and shipped to market; it is also a grain buyers' plant where the grain is weighed, docked and graded and then taken over by the company who pays cash for it to the farmer'.

"Regarding terminal elevators (page 39 of the report) the following is stated:-

'It is the duty of these elevators to receive all grain tendered to them for storage in a dry and suitable condition for warehousing, to clean it and to account for the screenings; to bin it according to grade, keeping each grade separate and unmixed, and

to ship out equal quantities of the same grade when called upon to do so by the owner or his assignee'.

"In the years since this Royal Commission made its report, differences of method rather than of substance have from time to time developed in the operation of grain elevators. This is particularly true since the Wheat Board has been taking over the entire wheat crop. But, in essence, country and terminal grain elevators continue to discharge their necessary function, of the nature disclosed in the foregoing quotations, in the movement to market of the western grain crop.

"According to the return made by the Board of Grain Commissioners (July 31st, 1944) there are 5,541 country elevators in operation. Of these, 3,284, or 59.1% are owned by members of this Association. The remaining country elevators are owned to the extent of 519 by United Grain Growers Limited, and to the extent of 1,738, or 31.4% by wholly-owned subsidiaries of the Saskatchewan and Alberta Pools and by the Manitoba Pool or its member associations. These three pools are the so-called 'co-operatives' which compete with our members.

"The Saskatchewan Pool also owns, presumably, through a wholly-owned subsidiary, a transfer elevator at Buffalo, N.Y., which they have leased to other interests.

"The total capacity of the country elevators now owned and operated by members of this Association is 160,496,000 bushels, or 54.2% of the total capacity of all country elevators in Manitoba, Saskatchewan and Alberta.

"At the present, 21 terminal elevators are operated by our members. These have a total permanent and

temporary capacity of terminal elevators operated, directly or indirectly, by the three pools is a little over 57,000,000 bushels.

"The present value of the investment in elevators owned by members of this Association is estimated to be approximately \$65,000,000.

Facts Regarding The Pools

Present position in respect of
taxation, organization, business
methods and operations.

"Your Commission is directed to inquire into -

- (a) the present position of co-operatives in the matter of the application thereto of the Income War Tax Act and The Excess Profits Tax Act, 1940, and
- (b) the organization and business methods and operations of the said co-operatives as well as any other matters relevant to the question of the application of income and profits tax measures thereto.

"We propose now to submit relevant facts in respect of the foregoing, but to deal with the matters mentioned in paragraph (b) before touching upon the matter referred to in paragraph (a).

"So far as concerns factual material in this brief, we propose to confine ourselves as closely as possible to a recital of those facts which are fundamental to a proper understanding of the past and present position of the pools or are, for other reasons, deemed to be of major importance from your point of view.

Organization of the Pools.

"The so-called 'co-operatives' which are engaged, directly or through wholly-owned subsidiaries, in the

business of operating grain elevators are three organizations, generally known and herein usually referred to collectively as the 'pools' and respectively as the 'Alberta Pool', the 'Saskatchewan Pool' and the 'Manitoba Pool'.

"The organization of these pools and of their respective and joint subsidiaries and, in the case of the Manitoba Pool, of its elevator association members, has been a process of gradual and contemporaneous development, which, in the case of the Alberta and Saskatchewan Pools, has been along similar lines. We shall now review the steps taken by each to attain its present form and status.
The Alberta Pool.

"The Alberta Pool (whose full name was 'Alberta Co-operative Wheat Producers Limited' until 1929 when it became 'Alberta Wheat Pool') was incorporated on August 18th, 1923, under the provisions of The Co-operative Associations Act of the Province of Alberta, being Cap. 160 R.S.A. (1922), since repealed by Cap. 66 of the Alberta Statutes of 1937.

"The incorporation of the Alberta Pool was confirmed and additional specific powers were granted to it, with retroactive effect to its incorporation, by Cap. 7 of the 1924 statutes of Alberta.

"This 1924 statute provided that the Alberta Pool should have 'the general capacity and powers which the common law ordinarily attaches to corporations created by charter in so far as it is within the legislative authority of the province to grant such general capacity and powers'. The specific corporate powers granted to the Alberta Pool by this statute included, to state them

summarily, the power to conduct a general grain business; to acquire, own and operate elevators; to obtain a licence under the Canada Grain Act; to acquire any business of the nature of that which the pool was itself authorized to carry on; to promote any subsidiary company or organization; and to distribute among the members, in kind, any property of the pool.

"In 1925, the Alberta Pool procured the incorporation and organization of a subsidiary under the name of Alberta Pool Elevators Limited.

"In 1929, an Act was passed, being chapter 73 of the Statutes of that year, which declared that, as and from August 18th, 1925, the Alberta Pool had had 'the general capacity and powers which the common law ordinarily attaches to corporations created by charter', including capacities and powers of the widest scope set out in thirty-two separate paragraphs in the Act.

"This Act of 1929 specifically provided, in section 15, that 'the directors of the pool shall administer the affairs of the pool in all things and shall have power to do all things in their opinion necessary or useful for the conduct of the business of the pool'.

"Section 23 of this Act of 1929 contains curious provisions purporting to create a trust of indefinite nature and term in respect of the elevator reserves 'and all assets heretofore or hereafter acquired therewith' in favour of the members from whom they were withheld. Nothing is said about the commercial reserves and we are not aware of what, if anything, the Alberta Pool has done since 1929 which would indicate a recognition of any obligation to function as a trustee for these original

members.

"In order that you may understand why drastic changes were made at or about this time in the Alberta Pool organization, we shall here interject a brief statement regarding the way in which this pool has operated since its incorporation.

"When first organized, the Alberta Pool's primary power was to operate a pool for the benefit of its members. In the exercise of this power, contracts were made with growers, who thereby became members of the pool, under which the latter committed themselves to deliver all their wheat to the pool for sale and the pool agreed to account to the members for the price obtained for their grain on the basis of average prices obtained for the various grades respectively on sales during the year. Under these contracts, the pool reserved the right to withhold certain amounts from moneys which would otherwise have to be paid to its members. The sums so withheld are known as 'elevator reserves' and 'commercial reserves' respectively, (the word 'deductions' being sometimes used instead of 'reserves'), the rate of deduction for elevator reserves being 2¢ per bushel of wheat delivered for sale by the members respectively, and the rate of deduction for commercial reserves being an amount equivalent to 1% of the proceeds of sale of such wheat.

"The above mentioned subsidiary company, Alberta Pool Elevators Limited, was financed with money so withheld from growers, but did not restrict its operations during this period to members of the Alberta Pool. In 1930, the subsidiary leased its elevators to its parent, the Alberta Pool.

"As a result of the collapse in the price of wheat

in the 1929-1930 period, the Alberta Pool sustained heavy losses. This pool had made, in the fall of 1929, an initial advance to its members, on the basis of \$1 per bushel delivered Fort William, in respect of wheat delivered by such members respectively, but did not realize enough from the sale of this wheat to enable it to meet its operating costs and to reimburse itself for these advances. Since the pool had borrowed a large amount of money from banks to make these advances and could not furnish adequate security for its repayment, and since it did not recover from its members the excess sums paid to them, amounting to \$6,430,020, it was in a precarious financial position. Finally, the Alberta Government had to implement its obligations, under a guarantee which it had given the banks, by procuring the funds required to pay off the bank loans.

"After this experience with contract pool operations, the Alberta Pool made a radical change in its business. In 1931, members were not required to pool their wheat for sale in the hands of the pool, such pooling as there was being on a voluntary basis and of comparatively small volume. The Alberta Pool has since that time applied itself, in the main, to carrying on the business of owning and operating grain elevators in the same way and manner as ordinary joint stock companies in that business.

"The decision to abandon the pool system of operation and to deal in wheat for profit to the pool was deliberately made. For confirmation of this statement and of certain other statements made in this brief, reference is made to the evidence given before the Royal Grain Inquiry Commission constituted under Order in Council (P.C. 1577) dated June 27th, 1936. The Honourable Mr. Justice Turgeon

was the Commissioner and made his report to the then Minister of Trade and Commerce under date of May 4th, 1938. For your convenience, we have set out in Schedule 'A' of this brief extracts from the record of the Commission bearing on this particular point.

"The position of the Alberta Pool at this time (31st July, 1931) was that it owed its members the sum of \$4,996,595 in respect of 'elevator reserves' and \$2,436,326 in respect of 'commercial reserves' and was indebted to the Province of Alberta to the extent of \$5,649,000 for advances made by the province to discharge the pool's liability to the banks.

"Coming back now to the last mentioned Act of Alberta (Cap. 73 of 1929) it should be noted that section 25 expressly ratified, validated and confirmed the purchase of shares of Alberta Pool Elevators Limited (the pool's subsidiary) with the elevator reserves which, under authority of this same Act, the Alberta Pool was expressly authorized to withhold from members of the pool as long as its directors were of the opinion that they were useful in carrying on the pool's business.

"Cap. 8 of the Alberta Statutes of 1932 subordinated and postponed the claims of members of the pool, in respect of both elevator reserves and commercial reserves, to the claims of the Government of Alberta.

"In Cap. 60 of the Alberta Statutes of 1933, attention was directed to the fact that, by the 1929 statute, the persons entitled to vote were those who were at the time the holders of current marketing agreements. This Act then took cognizance of the fact that the current marketing agreement with pool members was prescribed to expire on



July 15th, 1933, and that it was not the intention of the pool to enter into new marketing agreements with its members. Such being the state of affairs, this 1933 Act made provision for the exercise of voting powers at any time when there were no current marketing agreements 'in order that the pool may continue to exercise its corporate powers and functions and carry on its business and affairs.....'

"Further legislation was adopted in Alberta, in relation to the Alberta Pool, in the years 1939, 1941 and 1942. These Acts related primarily to financial dealings and arrangements between the pool and its former or present members arising out of or in respect of the elevator reserves, the commercial reserves, and the withholding of the 1928 final pool payment from members who were overpaid in 1929, and to the conditions of membership in the pool from time to time, and so forth. Reference to certain of these matters will be made in later provisions of this brief. The Saskatchewan Pool.

"The original name of the **Saskatchewan Pool** was Saskatchewan Co-operative Wheat Producers Limited. The word 'Wheat' was dropped from this name in 1944.

"This company was incorporated under the companies Act of the Province of Saskatchewan on August 25th, 1923, with an authorized share capital of 100,000 shares (later increased to 200,000 shares) of \$1 per value each. The incorporation was confirmed by Cap. 66 of the Statutes of Saskatchewan, 1924.

"The powers vested in the Saskatchewan Pool included the power to carry on, in all its branches, the business of buying and selling grain, including the construction and

acquisition of elevators; the power to enter into contracts for or incidental to the co-operative selling or marketing of grain; the power to invest moneys of the company in any way considered advisable and to vary such investments; the power to acquire and take over the business of any other concern with similar objects; the power to procure the registration of the company in any province of Canada or any part of the British Empire; and other general powers.

"In 1925, the Saskatchewan Pool procured the incorporation and organization of two subsidiaries, under the names of Saskatchewan Pool Elevators Limited and Saskatchewan Pool Terminals Limited respectively, the former subsidiary being designed to own and operate country elevators and the latter to own and operate terminal elevators.

"As in the case of the Alberta Pool, the Saskatchewan Pool's initial primary purpose was to operate a pool for the benefit of its members, and it made contracts with growers in Saskatchewan in similar terms to those made with Alberta growers by the Alberta Pool. Accordingly, the Saskatchewan Pool accumulated for use for its corporate purposes, from moneys withheld from its members, 'elevator reserves' and 'commercial reserves' such as have been mentioned in our statements regarding the Alberta Pool.

"On March 6th, 1926, the pool's subsidiary (Saskatchewan Pool Elevators Limited) bought the entire undertaking, including 251 country grain elevators, of Saskatchewan Co-operative Elevator Company Limited. This purchase involved the payment, partly in cash and partly by annual instalments, of a price equivalent to the arbitrated value

of the assets acquired (such value being later determined to be \$11,059,310) and the assumption of a mortgage in favour of the Government of the Province of Saskatchewan.

"The Saskatchewan Pool joined in this purchase agreement and undertook to withhold from its members as 'elevator reserves' the maximum amounts permitted under its contracts with such members and to invest the aggregate sum so withheld in the capital stock of Saskatchewan Pool Elevators Limited. In this way, the pool provided its subsidiary with funds from which to make payment of the annual purchase price instalments.

"This agreement was confirmed by cap. 71 of the 1927 Statutes of Saskatchewan.

"Except that the operations of the Saskatchewan Pool involved much larger sums of money than those of the Alberta Pool, it carried on business from time to time in much the same way as did the Alberta Pool and, in 1929-30 sustained similar heavy financial losses through failure to sell its wheat at a price sufficiently high to enable it to meet its operating costs and to reimburse it for the advances made to members as an initial payment for their wheat.

"The Saskatchewan Government found it expedient to take action to save the situation, after which the position of the Saskatchewan Pool appears to have been that it owed its members the sum of \$12,188,060 in respect of elevator reserves and \$6,567,851 in respect of commercial reserves and was indebted to the Province of Saskatchewan to the extent of \$13,752,000. The over-payments made to growers in respect of the 1929 crop aggregated \$13,479,797, exclusive of \$1,006,521.44 assumed by the pool.

"In 1930, the Saskatchewan Pool obtained statutory

authority to withhold from members the reserves which had been accumulated during the period of contract pool operations. The relevant statute provided that these reserves 'or earnings thereof' could 'with or without paying interest thereon' be 'invested or re-invested in any company, corporation or business, whether operated on a profit, non-profit, patronage dividend basis or otherwise'.

"As in the case of the Alberta Pool, the Saskatchewan Pool, following this experience, made similar radical changes in its business, and since and including 1931 has been primarily concerned with the business of operating grain elevators.

"In 1931, the Saskatchewan Pool acquired another subsidiary company, called Modern Press Limited, which has since that time been carrying on business as a general job printer on a commercial basis. It prints the pool's official periodical which is called the 'Western Producer'. The pool appears to have \$100,000 invested in this subsidiary.

"This pool also appears to have had a subsidiary which did construction work during many years.

"By Chapter 103 of the Saskatchewan Statutes of 1944, the name of the pool was changed from Saskatchewan Co-operative Wheat Producers Limited to Saskatchewan Co-operative Producers Limited. This Act gave the pool certain additional powers, including the power to carry on the business of 'co-operatively producing, collecting, buying, receiving, handling, feeding, finishing, slaughtering, transporting, grading, selling and marketing livestock and livestock products and, generally, to carry on the business of dealers in livestock and livestock products either as

principals or agents; to construct, produce or acquire and operate warehouses, feeding and sales yards, cold storage plants, abattoirs and packing plants'.

The Manitoba Pool.

"The Manitoba Pool was incorporated by Cap. 130 of the 1924 Statutes of Manitoba under the name of Manitoba Co-operative Wheat Producers Limited. It was given an authorized capital of 50,000 shares of \$1 par value each.

"The charter powers accorded this pool are very similar to those which were granted to the Saskatchewan pool, but included the power to form local societies with territorial limits.

"By Cap. 112 of the Manitoba Statutes of 1925, the charter powers of the Manitoba Pool were extended to permit the pool to acquire and hold shares in other corporations operating elevators or engaged in the handling of grain; and by another Act (enacted in 1925), a subsidiary of the pool was incorporated under the name of Manitoba Pool Elevators Limited, with an authorized share capital of \$1,000,000, divided into 1,000,000 shares of \$1 par value each.

"Apparently, the Manitoba Pool acquired all the stock of this subsidiary, including the additional shares created by subsequent increase of authorized share capital.

"The initial charter powers of this subsidiary contained a stipulation for the exercise of its corporate objects for the purpose of handling grain for the Manitoba Pool and its members, although these provisions are followed by general powers enabling this subsidiary company to carry on a general grain business.

"This pool's method of operating country elevators

was radically different from that of the other pools. Apparently the pool's subsidiary obtained money from the pool and lent this money from 1925 on to local associations for the purchase or construction of country elevators or built elevators for such associations and obtained contracts of lease and purchase from them. In any case, the pool's elevator subsidiary became a creditor of the member associations for the sums advanced or used. Pursuant to arrangements which have varied from time to time, these elevators were, and still are, under the management of Manitoba Pool Elevators. This company exercises complete control over the use and application of the earnings derived from operations. Members of this company are the above mentioned elevator associations which now number about 180 and such earnings as are actually distributed by Manitoba Pool Elevators to these associations are available for distribution to their grower members if such associations respectively deem it expedient to use them for that purpose.

"In 1929, by Cap. 108 of the statutes of that year, the name of the Manitoba Pool was changed from Manitoba co-operative Wheat Producers Limited to Manitoba Wheat Pool and its share capital was extinguished. Membership was restricted to persons who signed contracts with the pool, such members being given the same rights as shareholders and their interest being made proportionate to the aggregate sums withheld from them as reserves.

"In the same year, the capital of its subsidiary was increased to 5,000,000 shares of \$1 each.

"The Manitoba Pool appears to have operated a pool in manner similar to, but on a smaller scale than, the Alberta and Saskatchewan pools. Then, in 1929-30, it sustained

similar heavy financial losses.

"Thereupon, as in the case of Alberta and Saskatchewan, the government of the province became involved in its predicament. Governmental action to assist it is reflected in Caps. 56 and 57 of the statutes of 1931.

"The former of these two Acts extended the powers of the Manitoba Pool; declared it had had these powers since January 28, 1924; provided for the giving of guarantees and security on all assets and of indemnity to the government of the province; gave the pool the power to hold elevator and commercial reserves belonging to its members so long as the directors might deem necessary; and validated the investment by the pool of such reserves in elevator facilities and, in particular, in the stock of its subsidiary, Manitoba Pool Elevators Limited.

"The latter Act validated various agreements affecting the pool's financial position and provided for security on all the assets of both the pool and its above mentioned subsidiary in favour of the government.

"At this point, this pool appears to have owed \$1,956,668 for elevator reserves, \$988,597 for commercial reserves and \$3,374,939.78 to the government of Manitoba.

"It seems clear that, at or about this time, all business activities were carried on by Manitoba Pool Elevators Limited, as the directors' report of that company for the year 1931-1932 contains a specific statement to the effect that the subsidiary had become the major company.

"For several years following 1931, Manitoba Pool Elevators Limited apparently operated, as did the Alberta and Saskatchewan pools, small voluntary pools. This constituted only a small part of the business of this

company.

"On June 7, 1932, Gillespie Terminal Grain Company Limited filed a petition in bankruptcy against Manitoba Wheat Pool (the former parent company) claiming to be an unsatisfied execution creditor for \$75,000. A receiving order was made on November 5, 1932. A copy of the statement of affairs produced in connection with the bankruptcy proceedings is set out in schedule 'B' of this brief. From this, it will be observed that this company owed at this time virtually \$3,500,000, of which \$1,000,000 was shown to be due to the province of Manitoba as an unsecured obligation and \$2,363,202.88 was shown to be due the province as a secured obligation.

"No reference whatever appears in this statement to the liability of the pool to growers in respect of amounts withheld from them during several years by way of elevator reserves and commercial reserves, nor does the statement made any reference to the shares of Manitoba Pool Elevators Limited, which had previously been held by Manitoba Wheat Pool, nor to the amounts due by growers to the pool in respect of over-payments made to them by virtue of their having been given an initial payment, based on \$1 per bushel, for wheat in 1929.

"In any case, Manitoba Pool Elevators Limited thereupon became the debtor of the Manitoba government in respect of sums advanced to or for account of the pool. This government, at or about this time, reduced its claim by about \$1,275,000 to \$2,100,000. It does not appear that this company assumed any liability for the indebtedness of its former parent company to growers for the elevator reserves and commercial reserves. To what extent and under what circumstances the member

associations respectively are involved in liability for these reserves will have to be ascertained by examination of their accounts. Possibly, these claims were, in whole or part, wiped out by the bankruptcy.

"By Cap. 86 of the Manitoba Statutes of 1934, the Lieutenant Governor in Council was authorized, in any crop year, to make arrangements to finance Manitoba Pool Elevators Limited.

"By Caps. 8 and 26 of the Statutes of 1940, the Act to incorporate Manitoba Pool Elevators Limited was amended. Under these two Acts, it was provided that this company should have neither capital stock nor shares nor shareholders; that all the capital stock issued and unissued should be cancelled; that the company should be comprised of members instead of shareholders; and that the present members of the company were and should be certain specified cooperative elevator associations. It was prescribed that the members (that is, the associations) should be 'possessed of and entitled to exercise all the rights of and be subject to the same obligations as the shareholders heretofore possessed and been subject to, save and except as hereinafter provided in respect of surpluses, reserves and assets of the company and the allocation and distribution thereof.'

"Said Cap. 26 of the Statutes of 1940 provided that the persons eligible for election as directors of this company should be delegates or members of 'cooperative associations or cooperative companies' holding membership in Manitoba Pool Elevators Limited.

"By Cap. 21 of the Manitoba Statutes of 1944, the name of this company was changed by the elimination of the word 'limited'.

"Joint Activities and Ventures of the Pools(a) Canadian Co-operative Wheat Producers Limited.

"This company was incorporated by letters patent of the Dominion of Canada in 1924. The three pools originally held its share capital in equal amounts. This company's principal function, until contract pooling ended, was to market the grain of the pools at cost and return the proceeds of sale, less selling expenses, to the provincial pool units.

"It appears that since 1930 this company has functioned as a policy coordinating body and publicity or propaganda medium for the pools and to have been supported by contributions made by them.

(b) "Canadian Pool Agencies Limited

"This company was incorporated by letters patent of the Dominion of Canada in 1928. Originally, its share capital was held by Canadian Co-operative Wheat Producers Limited but later was transferred in equal amounts to the three pools.

"The primary function of this company is to serve as a general insurance agent for the pools. It collects premiums from them, procures the kinds and amounts of insurance coverage desired and earns a commission for so doing. During several years, it applied part of its earnings to the payment of a 6 per cent dividend on its capital stock, the balance of such earnings being distributed to the pools in proportion to the volume of business with this company done by them respectively. During recent years, the dividend on shares has been eliminated and earnings are distributed direct to the pools as a 'saving'. These earnings amounted to

\$103,020.80 for the year ended July 31, 1944. No income or excess profits taxes have been paid by this company. This company transacts some business for other than the pools and earns a commission thereon.

(c) Pool Insurance Limited - later Pool Insurance company

"Pool Insurance Limited was incorporated under the Manitoba Companies Act in 1939 with an authorized share capital of \$500,000. The pools subscribed for its shares in equal amounts.

"This was a fire insurance company with power to issue license or fidelity bonds and its business consisted of insuring the property of the pools against loss or damage by fire and of issuing fidelity bonds upon employees of the grain elevators operated by the pools.

"In 1940, incorporation of a new company was effected by a special act of the Dominion of Canada under the name of Pool Insurance Company. The predecessor company was wound up when the new company took over the business.

"This company pays out to the pools as dividends its surplus earnings. These amounted to \$234,800.39 for the year ended December 31, 1943. No income or excess profits taxes have been paid by this company.

"The share capital was recently redistributed among the three pools in an effort to make their proportionate shareholdings conform substantially to the volumes of business done by them respectively with this company.

(d) "Joint Grain Handling

"Since 1927, the Alberta Pool has from time to time used the terminal elevator facilities at the head of the lakes of the Manitoba Pool and occasionally of the Saskatchewan Pool under some kind of profit sharing

arrangement.

"Business Methods and Operations
of the Pools

"The Capital of the Pools - How it was raised

"Until 1931, the three pools confined their activities in the main to the conduct of contract pools and handled only the grain of their members. Meanwhile, however, they used the elevator and commercial reserves withheld from their members for working capital and for the acquisition, through subsidiaries formed for the purpose, of country and terminal elevators.

"These reserves constituted the capital of the pools and amounted by 1930 to over \$29,000,000.

"Interest was paid or credited on these reserves, as follows:

Alberta Pool - paid in 1928 and 1929; credited for 1930 and 1931 to a special account but not paid; no interest has been paid since.

Saskatchewan Pool - paid in 1928 and 1929; credited in 1930 but payment made only in 1941; paid at the rate of 3 per cent per annum on elevator reserves only in 1944.

Manitoba Pool - paid in 1929-30 for certain past periods, nothing since.

"As a result of losses sustained in handling the 1929 crop, the pools all abandoned contract pools and, apart from handling comparatively small voluntary pools at various times, have, since 1930, engaged in the business of operating grain elevators in the same way as do the joint stock companies which are carrying on that business.

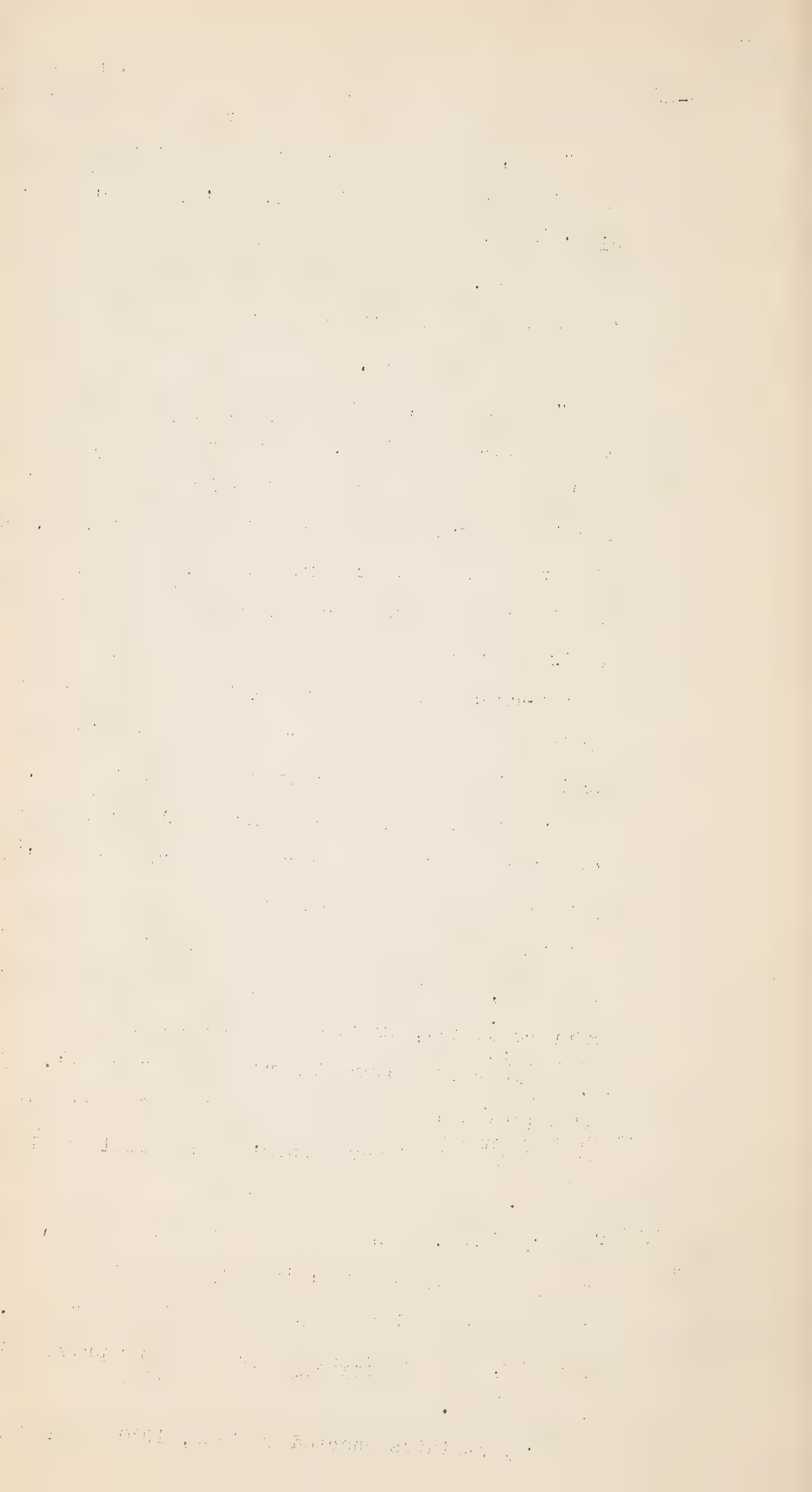
"Thus, the pools secured their original circulating and fixed capital by withholding 'elevator' and 'commercial' reserves from members up to and including the crop year 1928-9. This withholding was made pursuant to the terms of the contracts which in those years bound these members to the pools.

"In any case, when the pools sustained the heavy losses mentioned above, and later when they were confronted by the task of paying off their debts to their respective governments (aggregating about \$22,000,000.), the status of these reserves was drastically changed by commitments made to such governments respectively and by legislation designed to deny or defer any right to the member-creditors to assert claims for either principal or interest of these reserves and to confirm the pools' actions in respect of their use and employment.

"In the 1929 Wheat Pool Act of Alberta it was decreed (section 23) that the elevator reserves could 'be retained by the pool so long as its directors are of opinion that it is useful in carrying on the business of the pool, notwithstanding anything in any marketing agreement contained, or that any member may have ceased to be the holder of a current marketing agreement'. This Act also provided that the pool could offset any claim of the pool against any member's commercial or elevator reserves.

"In 1932, an Act was passed in Alberta prohibiting any payment by the pool in respect of these reserves so long as the pool was indebted to the government. Presumably, this confirmed an undertaking previously given by the pool.

"By statutes enacted in 1929, 1930 and 1932, a similar



state of affairs in respect of these reserves was created in Saskatchewan and additional provision was made:-

- (a) to prevent any sale or assignment of, or charge upon, the interest of any person in these reserves until approved by the company, in a manner to be determined by the company, who shall have an absolute discretion as to the granting of such approval' (the 'company' referred to in this statute being the Saskatchewan Pool); and
- (b) establishing the rights of the owners of these reserves as the owners of the ultimate equity of the pool in case of its liquidation, bankruptcy or winding up; and
- (c) giving the Saskatchewan Pool the right to offset over-payments made (this refers to the heavy over-payment upon the 1929 crop) against these reserves or other amounts owing to member-creditors.

"The Manitoba government enacted legislation in 1931, in respect of the commercial and elevator reserves withheld from members of the Manitoba Pool, to substantially the same effect as the Saskatchewan statutes.

"As already stated, the Manitoba Pool was put into bankruptcy in 1932. As no reference appeared in the statement of affairs of the pool to these reserves, (see schedule 'B' hereto) the status of claims of member-creditors in respect of these reserves is obscure and should be ascertained by investigation.

"Internal Administration

"The business and affairs of each of the pools are under the control of its directors. These directors have the powers and authority usually vested in company

directors and are, subject to a minor exception in the case of the Manitoba Pool, elected by representatives of the members. There have been variations between the pools and during the years since 1930 in respect of the qualifications of members to vote for the election of directors.

"In Alberta, membership originally depended on the ownership of a \$1 share of stock.

"In 1929, membership was made contingent on signing a marketing agreement, such agreement being then on a compulsory basis requiring the member to market all his crop through the pool. Such membership carried a vote upon the election of a delegate from the member's sub-district, the delegates being persons who attended the meeting at which the directors were elected and who voted upon such election.

"At present, voting membership in the Alberta Pool appears to be open to any wheat grower who delivers a certain amount of wheat to a pool elevator and who owns a certain amount of elevator or commercial reserves.

"In Saskatchewan, membership has always depended on holding a \$1 share of stock, but the pool could, under a statute of 1924, prevent a member from voting if he did not have a marketing contract with the pool. Accordingly, when the term of the first five-year marketing contract expired in 1927, those members who did not sign a new five-year contract were debarred from voting. This was changed in 1934 and shareholders now appear to have voting rights whether or not they have business dealings with the pool.

"In Manitoba, a shareholder originally had to sign a contract with the pool to obtain voting rights. When, in 1929, the capital stock was eliminated, it was provided

that all persons who were parties to contracts should be members. Upon the bankruptcy of the original pool, Manitoba Pool Elevators Limited became the top company of the organization. Its membership has now come to consist of elevator associations of which it has been stated there were 180 on July 31, 1944.

"By an agreement with the Manitoba government, dated August 1, 1931, these local associations were given the right to elect a majority of the directors and the government obtained the right to elect the minority, but such minority were vested with power to veto expenditures.

"The directors of all three pools exercise the powers usually exercised by directors of joint stock companies.

"So far as the respective and joint subsidiaries of the pools are concerned, these are ordinary joint stock companies and their internal administration is subject to the rules laid down in the statutes under which they have respectively been incorporated and organized.

"Litigation with Minister of National Revenue

"The Saskatchewan Pool was assessed for income tax on income alleged to have been made by it in 1925 and 1926. Litigation ensued which was terminated by judgment of the Supreme Court of Canada rendered on April 10, 1930.

"The assessment was made upon the elevator and commercial reserves withheld by the pool in the years 1925 and 1926.

"The Supreme Court held that these reserves were in the nature of advances made by grain growers and, being returnable to such growers, were not 'income' of the pool within the meaning of the Income War Tax Act.

"This judgment has no application to what has trans-

pired since the pools abandoned the business of contract pooling nor has it any application to income and profits from time to time earned or made by a pool through the investment or other use or employment of these reserves or other moneys.

"Dominion and Provincial Taxation

"Saskatchewan Pool Elevators Limited paid income or profits taxes to the province in the years 1931 to 1938 inclusive.

"The Alberta Pool paid a tax per elevator in these years. Under the law of that province, the greater of the elevator tax or the income tax was payable by elevator companies. Presumably, the elevator tax amounted to more than the income tax. In any case, income tax, as such, does not appear to have been paid to Alberta by the Alberta Pool.

"There appears to have been a somewhat similar type of elevator tax imposed by Manitoba in 1938, and it is assumed that member-associations of the Manitoba Pool paid this tax.

"Saskatchewan Pool Elevators Limited paid dominion income tax for the years ended July 31, 1926, 1927, 1928 and 1929.

"In January, 1941, Pool Insurance Company or Pool Insurance Limited was assessed for tax on 1939 income and filed a notice of appeal. There, the matter rests.

"In 1941, the provincial governments vacated the corporate tax field under agreement with the dominion government, effective, so far as income and profits taxes were concerned, as from December 31, 1940.

"Patronage Dividends"

"The Pools have paid so-called 'patronage dividends' at various times since 1930.

"These payments are based on the numbers of bushels of the various kinds of grain delivered by the member recipients during some financial period or periods prior to that in which payment is made. Persons who are not members do not participate in these distributions, but apparently those who were not members during the relevant financial period but nevertheless delivered grain to the pool during such period may participate in the distribution by becoming members. Members who delivered no grain in the relevant financial period do not participate.

"Latterly, in Alberta and Saskatchewan, these payments have been denominated 'excess charges refunds'.

"What takes place, apparently, is that, when the pools ascertain the amount of their profits for a financial year or years, they decide how much they wish to allocate or appropriate and pay to members. The amount so appropriated is then or thereafter paid out except if or to the extent that some other application of the amounts appropriated or allocated is deemed expedient by the directors.

"These allocations, appropriations and payments have been entirely voluntary in nature. The pools are under no obligation to make them in respect of any period. The discretion of the directors in this regard would seem to be as absolute and uncontrolled as is the discretion of the directors of an ordinary joint stock company in respect of declaring and paying dividends to shareholders.

"Particulars of the patronage dividends allocated, appropriated and paid to date by the pools and their application are given in schedule 'C' hereto.

"Dealings by the Pools in commercial and
elevator reserves

"In 1941, the Alberta Pool was given authority by statute, subject to prior express authorization of the delegates to buy from the estates of deceased members their interests, or parts thereof, in the elevator and commercial reserves. The amount which the pool could apply to such purchases was limited to a sum equivalent to 20 per cent of the then current year's depreciation reserve.

"In 1942, this pool was given further statutory power to acquire these reserves and, up to July 31, 1944, had spent \$1,207,724.35 for that purpose. Part of the reserves so purchased were distributed to members as a patronage dividend in respect of the year 1940-1941, leaving as at July 31, 1944, \$951,198.47 of these reserves in the hands of the pool. These were held, according to the pool's financial statement for 1943-1944, as an investment of the pool.

"The Alberta Pool did not make the final payment, aggregating over \$1,000,000, to its member-growers in respect of the 1928 contract pool. In 1941, the amount due was credited to the elevator reserve accounts of the persons concerned respectively, thus bringing the aggregate amount of these reserves, as at July 31, 1941, up to \$6,033,655. Previously, it had been \$4,996,101.

"The Saskatchewan Pool has also bought elevator reserves at from fifty to seventy-five cents on the dollar, but has done so, in effect, for member patrons.

It is reported that this price has lately been raised to one hundred cents on the dollar. Nothing is allowed to the seller for unpaid interest. The mechanics is, apparently, to declare a patronage dividend and pay it partly in cash and partly by the transfer to the accounts of the members respectively of an appropriate amount of these elevator reserves.

"By this device, those who originally provided the capital for the elevator facilities and who are not continuing to transact business with the pool are eliminated, and members currently doing business with the pool take over their claims.

"The present status of these reserves in the Manitoba organization is obscure and should be ascertained by investigation.

"Other matters relevant to the question of the application of the income and profits tax measures to the Pools.

"Such other matters as are relevant to the question of the application of these tax measures will be mentioned and discussed under later headings of this brief. Meanwhile, it is expedient to consider the foregoing facts with a view to determining what differences and similarities there are between the pools and those ordinary joint stock companies which are, like the pools, engaged in the business of operating grain elevators. Only those differences and similarities which can be regarded as having a bearing on taxation need be mentioned.

"It seems clear from these facts that the only differences which have existed between them since 1930, or which now exist between them, are:

"First, neither the pools nor their various respective

and joint subsidiaries have been paying any dominion income or excess profits taxes.

"The ordinary joint stock companies which are carrying on precisely similar business operations have been paying these taxes and still are.

"Second: The pools permit their 'members' from time to time, as distinguished from such shareholders as they may have had or now have, to control the election of their directors.

"Third: The pools have all been distributing part of their respective incomes as so-called patronage dividends.

"The points of similarity between the pools and their subsidiaries, on the one hand, and ordinary joint stock companies carrying on a similar business, on the other hand, are:

"First: They are all corporations and, as such, are legal entities, separate and distinct from the 'members' and shareholders thereof.

"Second: The affairs of all of them are managed by directors who are elected annually and exercise the usual powers and authority of company directors.

"Third: They all transact business in the same manner and subject to the same regulations and controls and they do business with anyone, irrespective of whether or not he is a member or shareholder."

I wish to make a correction in that paragraph. I do not think it is fair to state that the joint subsidiaries, the pool insurance and pool agencies, do business with anyone. The pool agencies apparently have some cash non-member business, and the pool insurance too; but that statement is too sweeping to apply to these two joint subsidiaries. Also, you should note that that statement

is probably too sweeping, in view of evidence before you, to apply to a company like the Saskatchewan Construction Company. I cannot recall that there was any evidence that they did business with anyone. These are the only variations I recall at the moment.

"Fourth: No 'member' or shareholder, as such, of any of them, has any title to any of the corporate property or assets or to any property or assets of any subsidiaries, absolute ownership of all such property and assets being vested in the corporation concerned.

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"Fifth: The income and profits derived from the corporate business of all of them belong to the corporations concerned respectively, no member or shareholder having any right of ownership therein or to exercise any control in respect thereof, except, so far only as control is concerned, as a director, in which capacity he is bound to act only and exclusively in the best interests of the corporation and of the members or shareholders as a whole.

"Sixth: The incomes of none of them are exempted from tax under section 4(g) or section 4(p) or any other provision of the Income War Tax Act, nor are their profits exempted from tax under any provisions of the Excess Profits Tax Act.

"The present position of the pools in the matter of the application thereto of the Income War Tax Act and the Excess Profits Tax Act, 1940.

"In our view, the pools and their subsidiaries are respectively subject to the provisions of the above mentioned acts and therefore liable for payment of taxes thereunder in respect of all income and profits derived by them from operations since contract pooling was abandoned over fourteen years ago. It is also our view that the elevator company subsidiaries of the pools were all subject to such provisions prior to that time.

"In section 9, subsection 2 of the Income War Tax Act, it is provided that, save as in the act otherwise provided, 'corporations and joint stock companies resident or carrying on business in Canada, no matter how created or organized, shall pay a tax upon income at the rate applicable thereto set forth in the first schedule of this act.'

"As will have been seen from the foregoing recital

of relevant facts, the three pools and all their subsidiaries are corporations and are all both resident and carrying on business in Canada. So, unless these companies are somewhere in the act expressly exempted from tax, their income is taxable.

"Section 4 of this act lists the incomes which are exempted from tax. There are no other provisions of the act under which the pools or their subsidiaries can be exempted from tax.

"The only subsections of this section 4 which could apply to any cooperative which is engaged in business are (g) and (p). Neither of these subsections can be interpreted to provide exemption for any of the pools or any of their subsidiaries.

"Subsection (g) of section 4, reads as follows:

'(g) Mutual corporations; the income of mutual corporations not having a capital represented by shares, no part of the income of which inures to the profit of any member thereof, and of life insurance companies except such amount as is credited to shareholders' accounts.'

"It seems clear that none of the pools nor any of their respective or joint subsidiaries are mutual corporations of such kind as to meet the requirements of this subsection.

"Subsection (p) of section 4, reads as follows:

'(p) Cooperative companies and associations: the income of farmers', dairymen's, livestockmen's, fruit growers', poultrymen's, fishermen's and other like cooperative companies and associations, whether with or without share capital, organized and operated on a cooperative basis, which organizations

(a) market the products of the members of shareholders

of such cooperative organizations' under an obligation to pay to them the proceeds from the sales on the basis of quantity and quality, less necessary expenses and reserves;

(b) purchase supplies and equipment for the use of such members under an obligation to turn such supplies and equipment over to them at cost, plus necessary expenses and reserves.

'Such companies and associations may market the produce of, or purchase supplies and equipment for non-members of the company or association provided the value thereof does not exceed twenty per centum of the value of produce, supplies or equipment marketed or purchased for the members or shareholders.

'This exemption shall extend to companies and associations owned or controlled by such cooperative companies and associations and organized for the purpose of financing their operations.'

"From this it is apparent that several conditions must all be met before the income of a corporation which engages in the marketing of products will be held to be exempted from tax under this subsection. These conditions are:

- '(i) that the company is a cooperative company of farmers or other producers,
- (ii) that it is organized on a cooperative basis',
- (iii) that it is operated on a cooperative basis'
- (iv) that it markets the products of its members or shareholders under an obligation to pay to them the proceeds from sales on the basis of quantity and quality, less necessary expenses and reserves, and
- (v) that products may be marketed for non-members

only if the value of such products does not exceed 20 per cent of the value of the products marketed for members or shareholders.'

"If, as seems clear, the word 'organized' in the phrase 'organized and operated on a cooperative basis' is to be read as referring not merely to the date of the formation of the corporation concerned but also to its position from time to time, it is submitted that the pools ceased subsequently to their original organization to be 'cooperative companies' in any significant sense. There are two points of time at which they must be said to have done so. These are:

'(i) Shortly after their original organization, when they undertook to construct and operate elevators and obtained licenses for these as public elevators instead of as private elevators under the provisions of the Canada Grain Act. The acceptance of public elevator licenses committed them to commercial operations of a kind wholly different from those which can be described as cooperative in any proper sense,

(ii) Upon the rescission or termination, at varying dates in or about 1930, or soon after the enactment of this section 4(p), of the long term contracts under which pooling of grain had previously been carried out and by the execution of which the growers who were parties to such contracts became entitled to defined rights as members of the company. Thereafter, the main and, in some years, the only activities of the pools and their subsidiaries were of an ordinary commercial character. Such insignificant cooperative operations as were sometimes subsequently carried

on were entirely unrelated to membership in the organization or to any share in its direction or assets.'

"In any case, it is apparent that this section (4p) applies only to cooperatives that operate on an agency basis for their members.

"None of the pools or any of their subsidiaries have, since 1930, marketed the products of anyone (except, perhaps, under voluntary pooling arrangements of minor importance) under an obligation to pay to members or shareholders the proceeds of sales. Accordingly, they cannot assert the agency status which might support a claim of exemption under this section.

"So far as concerns the exemption from tax of the income of subsidiaries of the pools, this subsection can have no application in a case where the parent companies cannot bring themselves within the scope of the subsection. In any event, such exemption would apply only to those subsidiaries of cooperative companies which were organized 'for the purpose of financing their operations'. None of the subsidiaries of the pools was so organized.

"In the circumstances, it remains only to establish that the pools had income within the meaning of the Income War Tax Act, to bring them definitely under the taxing provisions of section 9, subsection 2, thereof,

"'income' is defined in section 3 of the act. Leaving out words that are unnecessary for present purposes, 'income' means the annual net profit or gain being profit from a trade or commercial or financial or other business or calling, directly or indirectly received by a person fromany trade, manufacture or business.... and shall includedividends or profits directly or indirectly received

from money at interest or from stocks, or from any other investment, and whether such gains or profits are divided or distributed or not'. .

"Under the act, the word 'person' is defined to include any body corporate and politic and any association or other body. There is, therefore, no doubt that the pools and each and all of their various subsidiaries are 'persons' within the meaning of this definition of 'income'.

"The foregoing recital of relevant facts appears to demonstrate clearly that, from the time when the pools abandoned the contract pooling of grain, they have been engaged in trade and business and that, to the extent that they or their subsidiaries made profits therefrom, they earned 'income'.

"Prior to the crop year 1930, the pools were 'accountable to growers for the proceeds of grain delivered by them respectively, subject to the right of the pools to retain certain sums known as elevator and commercial reserves.

"Their method of operation prior to 1930 is described in the case of the Minister of National Revenue vs. Saskatchewan CooperativeWheat Producers Limited (1930 S.C.R. 402).

"Since 1930, the pools, either directly or through subsidiaries, have been doing business in the same way and by the same methods as other operators of country and terminal elevators.

"These elevators have been and are licensed as public elevators under the Canada Grain Act.

"At the country elevators, the pools or their elevator companies have bought grain from members and from non-members and have stored grain.

"Grain so purchased has been hedged through the facilities of the Winnipeg Grain Exchange in which the pools have held and still hold memberships, and has eventually been sold for the account of the pools or the subsidiary companies concerned.

"The Saskatchewan pool has operated, and still operates, a grain export department through which it buys wheat which has not been produced by members of the pool in the domestic market for sale in the export market. This branch of the pool's business is steadily expanding.

"The terminal elevators of the pools have been used to receive part of the grain acquired at the country elevators.

"The pools have not shipped all grain from their country elevators to their own terminal elevators, some has been divereted to other concerns or to milling companies in cases where a premium could be obtained for such diversion.

"At their terminal elevators, the pools have received grain from other operators and other shippers.

"Since the establishment of the Canadian Wheat Board in 1935, the pools have operated, to the extent prescribed by the applicable laws and regulations, as directed by the Board and as agents for the Board.

"Wheat and other grains purchased by the Wheat Board from growers through the elevator operators are subsequently sold, in some cases, by the board to pools and line companies who make the purchase with the object of re-selling at a profit.

"In addition, the following business activities are carried on by or for the pools, or one or more of them, by subsidiary or controlled companies; namely

- '(a) the insurance business,
- (b) the business of issuing surety bonds,
- (c) the insurance agency business,
- (d) the publishing business - each pool publishes an official periodical,
- (e) the printing business,
- (f) the business of owning and leasing property.'

"Apropos of the last mentioned business, the annual reports of the Alberta and Saskatchewan pools for the year ended July 31, 1944, disclose that the Alberta pool (or its elevator company) owns 288, and the Saskatchewan pool (or its elevator company) owns 422, 'agents' dwellings. These are presumably rented by employees.

"The Saskatchewan pool also owns, directly or indirectly, an office building in Regina in which it leases space to third parties and, as previously stated, it also owns a transfer elevator in Buffalo which is leased to other parties.

"Accordingly, the pools or subsidiaries of the pools, as the case may be, have from time to time during the past fourteen years derived profits from:

- "(i) handling, storing, cleaning, selling and otherwise dealing in and with grain in their country elevators and handling carload lots;
- '(ii) storing, elevating and cleaning grain at terminal elevators;
- (iii) purchasing and receiving grain from members and non-members and subsequently dealing in and with such grain;
- (iv) receiving dividends and other revenue from wholly owned or jointly owned subsidiaries;
- (v) receiving investment income from dominion and

provincial government bonds and other investments;

(vi) receiving rents from real estate."

Also, you will recall that one or more, or all of the pools do some business in the handling of coal and flour and twine. Those are subsidiary.

"Reference to the financial statements of the Pools and of their respective and joint subsidiaries for their financial years 1931 to 1944, both inclusive, will disclose the great extent of their operations and the very large profits and income they have respectively made or earned.

"The excess Profits Tax Act, 1940, imposes taxes on the profits and excess profits of every person residing or ordinarily resident in Canada or who is carrying on business in Canada.

"'Person' is defined in section 2 of this act to include 'any body corporate and politic and any partnership, association or other body'.

"'Profits' is defined in this same section to mean in the case of a corporation or joint stock company, for any taxation period, 'the amount of the net taxable income of said corporation or joint stock company as determined under the provisions of the Income War Tax Act in respect of the same taxation period' and 'excess profits' is defined to mean profits in excess of 'standard profits'. The amount of such standard profits is determined, or is subject to determination, according to certain provisions of this act.

"Accordingly, there can be no 'profits' or 'excess profits' to be taxed under the Excess Profits Tax Act unless there be taxable income. To the extent that from year to year, since this act came into operation, the

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pools and their subsidiaries have had taxable income, they have also had 'profits' and, subject to the amount of their 'standard profits', they have also had 'excessive profits', and they have been and are still liable for payment of excess profits taxes thereon;

"In some quarters it has been argued that the pools do not make profits within the meaning of the Income War Tax Act because they operate exclusively for and on behalf of their members and only for the purpose of making savings for such members. There are also suggestions that the pools cannot make a profit because, in some mysterious way, their operations amount only to dealings of members with themselves and that one cannot make a profit by buying from or selling to himself.

"It does not seem appropriate in this brief to devote much time or space to considering these arguments or suggestions as they can have no possible application to the pools or their operations.

"Since 1930, there has been no trustee or agency relationship between the persons who have been for the time being 'members' or shareholders, and the pools or any of their subsidiaries. These corporations have functioned at all times as separate legal entities, carrying on trade and business for their own account and risk. When they have bought a member's grain, it has been bought without reservation and under no obligation or duty, express or implied, to account for its subsequent use or disposition.

"It may have been the intention of the pools at all times to make money for their members. It is always the intention of a joint stock company to make money for its shareholders but it has never been suggested that such an

intention operated to create an agency relationship, or to make the company a trustee, with or for such shareholders.

"Actually, there is no basic difference between the ordinary joint stock company and one of these pools. In the case of the former, there are shareholders who have, or whose predecessors in title have, contributed money to the company as capital, whereas, in the case of a pool, there were members (many of whom are not now members) who contributed necessary capital in the guise of elevator and commercial reserves, to the pool and there are present members who sell their grain to the pool and thereby provide it with the means or facilities for making a profit, of which such present members hope some time to obtain a part.

"In any case, the intentions of a corporation in respect of the handling, distribution or application of its profits have no bearing upon its taxability in respect of such profits. A company which intends to give all its profits to charity and which actually does so is nevertheless taxable in respect to such profits, except to the limited extent that its donation may be deductible under express provisions of the applicable statutes.

"As for the doctrine of 'mutuality' there has never been, since 1930, any semblance of identity between the pools or any of their subsidiaries and any member. The member's position in relation to the pool or to the subsidiary of the pool with which he transacts business is that such corporate body is a separate and distinct legal entity over which he can exercise, through his vote only, a minute measure of remote control."

Those are subsidiary operations.

"Relevant Details and Particulars

(1) On September 30, 1944, the Saskatchewan and Manitoba pool elevator companies announced that, effective October 2, street buying spreads would be reduced from the rate of three cents to one cent per bushel on all grains. These Companies further announced a reduction in handling charges on farmers' car-lot shipments to one quarter of one cent per bushel on wheat, oats, barley and rye and one cent per bushel on flax. The Alberta Pool adopted a similar policy on October 7 to become effective on October 10. The former tariff of elevator handling charges on car-lot shipping was one and three-quarters cents per bushel on wheat, barley and rye; one and a quarter cents on oats; and three cents on flax. Pool customers were also advised that adjustments would be made retroactively on the basis of these reduced charges in respect of all grains handled between August 1 and October 2, 1944. These reduced charges are not sufficient to cover the actual costs of rendering the services involved.

"It is obvious that the farmer will patronize the elevator at which he obtains the highest price or the lowest handling charge. Consequently, to remain in business, all line elevator companies and the United Grain Growers Limited had to put the reduced charges into effect regardless of the fact that the services rendered must be performed at a loss."

MR. PORTER: I should like to interrupt at this point. I raise, for the Commission's consideration, what to my mind is a very serious objection to this form of procedure. Here we find a statement of fact, or what purports to be a statement of fact, and I suggest that this witness is not qualified in any way to make that statement. That is, essentially, a controversial fact that only an elevator

operator could state. This association comes here, and it reminds me very much of what happened in my boyhood days, when we were throwing chestnuts. Once in a while some fellow would fill his pockets with chestnuts, and when the fight was on would place himself in front of a drugstore window so that we could not fight back at him. It seems to me that that is precisely what is happening here.

There is no one here who can speak for the companies -- no one who can speak for the companies this association represents with respect to the facts set out. The answer may be that the Commission will not regard these statements as proved.

THE CHAIRMAN: That situation was very fully explained in the evidence of the three pools which has preceded to-day's proceedings.

MR. PORTER: Their view was fully explained, yes.

THE CHAIRMAN: They say that it is done below cost, and that when the whole system is considered, and the manner of handling grain is regarded, that it is untrue that they carry on at a loss. I understand it that way.

MR. PORTER: But here is a conclusion. I do not know how the commission is going to handle this ---

THE CHAIRMAN: You know, Mr. Porter, how many conclusions are set out in pleadings, although they may not be established.

MR. PORTER: But these are not pleadings.

THE CHAIRMAN: What are they, then?

MR. PORTER: That is what I am trying to find out.

THE CHAIRMAN: Surely it is as close to a pleading as one can get in a commission.

MR. PORTER: Very well, so long as we understand it is a pleading.

THE CHAIRMAN: I do not know how my colleagues feel about

it, but I think that is clearly explained in the evidence by the three pools.

MR. PARKER: I agree with what you have stated, Mr. Chairman, but I think perhaps my learned friend Mr. Porter may be under some misapprehension. As I read it, the paragraph just read is an allegation that the companies were operating at a loss, not the pools; is that correct?

MR. HOWARD: Yes.

MR. PARKER: If that is what it intended, then it is quite different from what Mr. Porter was saying, or the point to which he was addressing himself. I understand that Mr. Howard is not alleging that the restrictions in charges resulted in the pools operating at a loss, at all. He has said, because they have had to follow suit, the line companies are operating at a loss. He may be able to prove that; I do not know.

MR. PORTER: It says that they had to put reduced charges into effect.

THE CHAIRMAN: The brief uses these words, "Regardless of the fact that the services rendered must be performed at a loss."

MR. PORTER: Yes, I see that.

THE CHAIRMAN: That is, by the line elevator company.

MR. PORTER: Then surely someone who knows what he is talking about should say that, and should be subjected to examination.

MR. PARKER: Mr. Lamont is here to answer that, when the time comes.

MR. PORTER: I say that because there are factors which may make that statement unsound.

THE CHAIRMAN: Quite true.

MR. PORTER: I am not particularly concerned with the

statement just read. At this point I wished to make our position clear, that is all.

THE CHAIRMAN: Then Mr. Howard may proceed.

MR. HOWARD: The brief continues as follows:

"The grain handling industry operates under rules and regulations and maximum grain handling tariffs fixed by the Board of Grain Commissioners. Each year a grain handling agreement is negotiated with the Canadian Wheat Board. Neither of these government bodies allows any more scope for profits to elevator companies than it considers reasonable because government policy is to ensure at all times the maximum return to the growers.

"Negotiations were initiated in the late summer of 1944 with a view to fixing the handling charges which could be made in respect of the current (1944-45) crop by elevator operators. The pools and members of this association participated in these discussions. In August 1944 the rates which could be charged were arrived at. These were then approved by the governor in council and confirmed by agreements between the Wheat Board and the Pools and other elevator companies respectively. The rates thus fixed were obviously fair to the growers in August when the agreement was voluntarily entered into and signed by the pool elevator organizations, so they were just as fair a month later. Nothing had meanwhile transpired to alter the situation. Yet, within a month of the time of signing the Wheat Board handling agreement, the pool organizations reduced their handling charges to a point which will not meet the cost of the service rendered.

"Subsequent to the public hearings of the Board of Grain Commissioners and pursuant to the provisions of the

Canada Grain Act, the three pools filed tariffs of charges at the maximum rates with the Board of Grain Commissioners. They operated under these from August 1, to October 1, with the exception of the storage rate for which they made a charge of 1/55th of a cent per bushel per day instead of the maximum rate of 1/50th of a cent per bushel per day.

"We refer to the 1944 report of United Grain Growers Limited, pages 17, 18 and 19. This company is not a member of this association. Following is an extract from page 19:

"The Canadian Wheat Board is the only body permitted by law to purchase wheat from producers in Canada. It acts through agents for which it must be finally responsible in all matters affecting price. The Canadian Wheat Board Act requires it to see all producers of wheat receive the same prices for the same grades. That is not being done. The Wheat Board will find it necessary, sooner or later, to insist upon uniformity of treatment of farmers by its agents.

"In any event, the present basis of handling street wheat cannot continue for very long. It has been made possible only because elevator companies have been receiving large revenues for storing wheat. Such storage charges, for more than a year, have been paid largely by the government of Canada, on the wheat it took over for government purposes on September 27, 1943. Revenue from that source may disappear to a large extent in the fairly near future, when western wheat is shipped out to fill requirements in Britain and other countries overseas."

"The drastic reductions brought into effect by the

pools will, if continued, result in:

"(i) The elimination of taxable earnings of all engaged in the business; and

(ii) The eventual destruction of their competitors in the grain trade and the consequent creation of a grain handling monopoly for the pools.'

(2) The Saskatchewan pool has recently acquired a subsidiary to engage in the live stock business and has an ambitious programme for still further wide expansion of its business and activities as witnessed by an article appearing in its official organ, the Western Producer, of 23rd November, 1944, entitled Cooperative Development. In this an expansion programme of \$2,500,000 is disclosed.

"This article states that a new development is to be located at Saskatoon where a twenty-one acre site has already been acquired and that the first unit to be developed will be a two-exPELLER vegetable oil plant. In addition, the expansion programme calls for:"

MR. PARKER: Was that article put in as an exhibit?

MR. HOWARD: Yes; in any event, it is quoted in the annual report for 1944.

MR. FILLMORE: I have it here.

THE CHAIRMAN: I believe it was put in by Mr. Wesson, was it not?

MR. MILLIKEN: This is in the Saskatchewan brief -- not the article itself, but a statement of it.

THE CHAIRMAN: Is that the article which was submitted to Mr. Wesson?

MR. FILLMORE: I submitted it to him, but it was not put in at the time.

MR. PARKER: If it is to be summarized in the brief, it would be much better if the article were put in. It may

or it may not be a correct summary; I do not know. It does not purport to be a quotation.

MR. MILLIKEN: I take it you are not putting it in on the assumption that Mr. Wesson has proved it. You are merely putting it in as a copy of the paper.

MR. HOWARD: Yes. It is listed in the 1944 annual report of the directors.

THE CHAIRMAN: Would you identify that, through the witness?

MR. HOWARD: I shall do so, when the registrar returns to the room. The brief continues:

"(i) The construction of a plant for the production of glycol from wheat, capable of handling 2,000 bushels per day and using the process developed by the National Research council.

'(ii) The construction of an up to date flour milling plant, the capacity of which will be determined by the ability to distribute through cooperative channels in the western provinces.

'(iii) The construction of suitable grain handling facilities designed to handle flax as well as wheat and other grains, and equipped to receive and ship grain.

'(iv) The construction of a plant for the production of starch from wheat and other grains, part of the production of which will be used as the raw material for the production of glucose, etc.

*(v) The construction of adequate warehousing facilities to serve these plants.

'(vi) The establishment of a food mixing plant through which the by-products of the various units in the development can be processed into prepared foods for live stock.'

"This indicates what can be done by an organization which is not required to pay its taxes. What is withheld from the federal treasury can be used for almost unlimited expansion, even in time of war.

"(3) As an illustration of what can be achieved by the application to corporate purposes of untaxed profits, the following is quoted from the issue of January 13, 1945, of the Alberta Wheat Pool Budget, the official organ of the Alberta Wheat Pool:

"Wheat Pool Accomplishments

"At the final session of the Alberta Wheat Pool delegates' annual convention in Calgary last November, R. D. Purdy, General Manager, gave a complete resume of Pool operations, dealing with many subjects not mentioned in the annual report.

"He also gave a summary of the financial accomplishments of the Alberta Wheat Pool since 1931 as follows:

- "1. Increased working capital from \$2,672,000 to \$5,196,000 after allowing for 1,350,000 refund of excess charges for season 1943-44, and improvement of \$2,574,000.
- "2. Acquired additional properties as follows:

Terminal at Port Arthur	\$600,000
Annexes at Port Arthur	423,000
Country annexes	685,000
Country Elevators	205,000
Agents' dwellings and other properties ...	<u>208,000</u>
	<u>\$2,121,000</u>
- "3. Sundry other assets increased by \$ 326,000
- "4. Paid off a mortgage of \$1,750,000 on the Vancouver Terminal.
- "5. Paid \$2,719,000 on account of principal and \$2,979,000 as interest to the provincial government on the 1929 overpayment.
- "6. Purchased at 100 cents on the dollar, elevator and commercial reserves amounting \$1,207,000.

- "'7. Provided for patronage dividends of \$898,000 in cash and \$256,000 in reserves, up to end of season 1942-43.
- "'8. Set aside \$1,350,000 for distribution from earnings of 1943-44.
- "'9. Increased reserve holders equity by \$2,693,000 after providing for a patronage dividend reserve of \$1,350,000 for the year 1943-44.
- "'10. Reserve holders equity increased from 43 per cent of net elevator and commercial reserve deductions to 84.4 per cent (almost double) after setting up reserves of \$1,350,000 for the year 1943-44.'

"(4) Following is an extract from an editorial entitled 'Big business' which appeared in the Cooperative Consumer of November 15, 1944:

"'It must indeed be encouraging to cooperators in Saskatchewan to know that one out of every three persons in the province is a member of a cooperative; that practically every town, village or hamlet has some form of cooperative business enterprise and that cooperative services are available to meet all needs from the cradle to the grave.'

"In the 1944 report of the directors of the Manitoba Pool Elevators we find the following:

"'Cooperative development in Manitoba: The number of cooperative associations in Manitoba has increased by two hundred and twenty-nine during the last six years; a period coterminous with the growth of the study group movement. These associations serve in the fields of grain handling, live stock, egg and poultry, milk distribution, butter and cheese production, honey, vegetable marketing, credit unions, consumer buying, hospital service and miscellaneous.'

"Actually there is no limit to the businesses and ventures in which the pools may engage if they are

allowed to continue to earn, free of tax, the profits of millions of dollars which they have made in the last fourteen years.

"Should there be a continuation of the unfair competition which they can provide because of their paying no taxes, the line elevator companies generally will ultimately have to sell out to them or re-organize in such manner as to avoid taxation.

"It is significant that the trend toward carrying on business in the cooperative form, or what is claimed to be the cooperative form, is rapidly accelerating during a period when the expansion of ordinary private enterprises has been limited and restricted by high taxes and by orders in council and regulations of wartime administrative bodies. The latest report of the Dominion Bureau of Statistics reveals that the dollar volume of business transacted by cooperatives, whether real or so-called, increased from the huge figure of about \$250,000,000 in 1942 to over \$350,000,000 in 1943 -- about 40 per cent in one year. This indicates that tax-paying private enterprise is falling behind in the struggle for existence. The primary cause is taxation. Obviously, as private enterprise loses ground, the ranks of the taxpayers are weakened and depleted.

"According to a recent press report, one of the pools has indicated that, if they are not going to get exemption from income and excess profits taxes, they will conduct their businesses in such a way that they will provide no income or profits to tax.

"Their recent reduction of charges for elevator services is indicative of a decision to adopt this course,

Mr. Lamont

at least for the time being. It may be that cooperatives have the right to use this method of doing business, although the adoption of such a policy would seem to be unwise and, in time of war, most prejudicial to the public interest.

"A private enterprise, as distinguished from co-operative enterprises, can hope to survive in the face of this type of competition only by using up reserves which should be kept intact and available for the post war reconstruction period and for legitimate expansion and development. Once such reserves are used up, private enterprises will be unable to continue in business and the cooperatives will have the entire trade to themselves.

"(5) By virtue of paying the taxes they owe, our members are, in effect, providing part of the cost of all the various public services which the pools need and use for the carrying on of their respective businesses and part of the cost of carrying on wars which are as much for the protection and preservation of the pools and their members as they are for the protection and preservation of the other citizens and institutions of Canada.

"In short, as long as the pools do not pay their taxes, all those who do pay are supporting the pools and aiding and assisting them in business. As a result, our members are being required to support and maintain competitors whose policies are designed to eliminate such members from the grain trade.

"The comparative position in relation to taxation under the Income War Tax Act and the Excess Profits Tax Act of Persons engaged in any line of business in direct competition with the pools.

General

"We now come to paragraph (c) of section 1 of the order in council:

"The members of this association are engaged in the same line of business as the pools and are in direct competition with the pools.

"Speaking generally, the comparative position in relation to taxation under said acts, of our members and the pools, can be summed up as follows:

"(i) Neither the pools nor their subsidiaries have been paying income or excess profits taxes under said acts. Our members have been and are paying such taxes.

(ii) By virtue of non-payment of these taxes, the pools have derived from their operations large earnings which have been applied to paying off indebtedness and interest thereon (notably indebtedness and interest to the governments of Alberta, Saskatchewan and Manitoba) to the acquisition of capital assets and to the expansion of their businesses generally.

(iii) Eleven line and terminal elevator companies which handle approximately the same quantity of grain as the pools, have, for the period 1930 to 1944 (both inclusive), paid or are liable to pay income and excess profits taxes to the dominion government aggregating \$14,699,000 in respect of income and profits derived from carrying on their business as operators of grain elevators in competition with the pools.

"(iv) An estimate has been made of the amounts of income and excess profits taxes which, based on their published financial statements, are payable by the pools for this same period. Schedule D hereto discloses the calculations made for purposes of such estimate and

indicates that the unpaid taxes of the pools for such period, apart from interest thereon and penalties, if any, aggregate the sum of at least \$21,532,001.

Note: "The amount stated in the foregoing paragraph (iii) includes the portion of excess profits taxes prescribed to be refundable after the termination of the war.

"The estimate referred to in said paragraph (iv) has been made on the assumption that interest paid by the pools respectively upon indebtedness to the provincial governments is deductible for tax purposes which may not be the case in respect of one or more of the pools.

The Commission's Report

"Under the terms of P.C. 8725 you are directed to report all facts that you deem pertinent for determining what would, in the public interest, constitute a just, fair and equitable basis for the application of the above-mentioned tax acts to:

"(i) cooperatives, and

(ii) persons other than cooperatives in respect of doing business analogous to cooperative methods, such as the making of payments commonly called patronage dividends.

"We assume that the word 'cooperatives' as used above has the extended meaning given to it by the earlier provisions of the order in council and that, therefore, you are expected to report the pertinent facts for determining a just, fair and equitable basis for the application of such tax acts to the pools and their subsidiaries, all of which claim to be organized and to operate on a cooperative basis.

"We submit that among the facts which we have

disclosed, the following are pertinent for such determination in respect of the pools and their respective and joint subsidiaries."

MR. PARKER: Would my learned friend tell me if he is suggesting that the facts enumerated at pages 40 and 41 are , in his opinion, proved before the commission; or are they mere allegations?

MR. HOWARD: In my opinion those are supported by proof before the commission, with the exception of No. 7, which still remains to be proved, and which will be proved by a witness who will be called.

MR. MILLIKEN: Frankly, I must say that this seems to be a most confusing procedure to anyone who is trying to distinguish between the pools and their subsidiaries. For instance, I notice at the middle of page 38 the following:

"By virtue of non-payment of these taxes, the pools have derived from their operations large earnings --" And so on. I do not know whether my learned friend is distinguishing pools from subsidiaries. The Saskatchewan pool has already shown the commission the only conceivable income it has is the interest on its commercial reserves. I do not know whether my learned friend is trying to make a distinction, but further back in the brief the same thing applies. In fact, we find it all through the brief, and particularly where reference is made to the fact that the supreme court case deals with the pools. That is quite correct; it deals with the pools; it does not deal with the elevator companies at all.

This brief is most confusing to me, because I do not know when my learned friend means one or both or either. He so often uses the word "pools" as obviously including elevator companies.

MR. HOWARD: At page four of the brief I tried to foresee this difficulty where, in the second to last paragraphs on that page I say:

"Socalled cooperatives which are engaged directly or through wholly-owned subsidiaries, in the business of operating grain elevators are three organizations, generally known and herein usually referred to collectively as the pools and respectively as the Alberta Pool, the Saskatchewan Pool and the Manitoba Pool."

So, when I refer to pools, I am not separating them out; I am not separating the body from the parts; I am speaking of the whole organizations.

MR. MILLIKEN: We insist they are all one organization, too; I do not know whether you agree with that or not.

MR. HOWARD: To have made that distinction all the way through would have created complication.

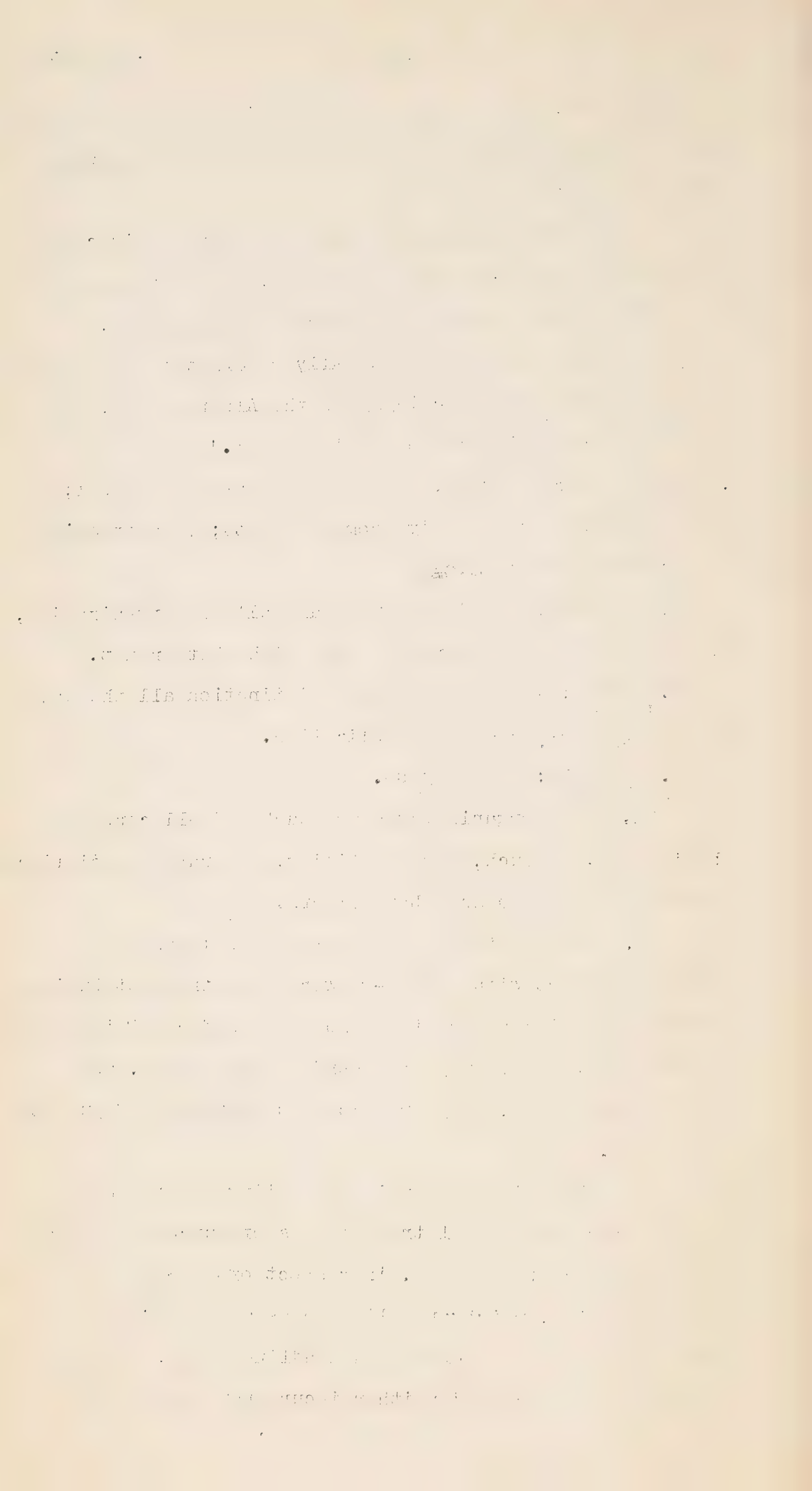
MR. MILLIKEN: Probably so.

MR. HOWARD:

"1. These organizations are each and all corporate bodies and, as such, legal entities, separate and distinct from their members and shareholders.

"2. Such of these organizations as transact business direct with member-growers also transact business of the same kind and on the same terms and conditions with non-members. This, they are bound to do because, as previously stated, they are licensed operators of public elevators.

"3. The principal business dealings of the pools are ordinary commercial transactions of purchase and sale of grain (except latterly, in respect of purchases of wheat and flax, which are all made as agents of the Wheat Board) and of storing and handling grain. The pool organization concerned neither incurs nor assumes any



obligation to pay members the proceeds of grain purchased but simply acquires such grain for the account of such organization, except during the past few years when most purchases from growers have been for account of the Wheat Board.

"4. Subsidiaries which do not transact business direct with pool members, such as the joint subsidiaries Canadian Pool Agencies Limited, and Pool Insurance Company, are ordinary commercial organizations, carrying on business for purposes of gain for the benefit of their shareholders, the pools.

"5. The Pools and their subsidiaries have during the past fourteen years been carrying on trades and businesses of extended scope and wide variety with a view to profit.

"6. Although liable therefor, the pools and their subsidiaries have not --"

It will be noted that I use the words "although liable therefor"; that is not a fact. It is simply an expression of opinion, naturally. The brief continues:

"--- during the last 14 or 15 years been paying income taxes which are exigible in respect of their incomes under the Income War Tax Act, nor have they been paying excess profits taxes in respect of their profits under the Excess Profits Tax Act, 1940.

"7. An estimate has been made for us that the arrears of taxes of the pools and their subsidiaries under these two acts aggregate at least \$21,537,001 exclusive of interest thereon and of penalties, if any.

"8. Through the retention and employment of large amounts of money which should have been paid in taxes,

the pools have all greatly reduced their debts and interest charges, have expanded their memberships and substantially improved their competitive positions to the serious detriment of their competitors who have meanwhile been paying income and excess profits taxes and have had available for similar purposes, in years when their operations resulted in a profit, only that residue of their earnings which remained after paying such taxes.

"9. The fact that the Department of National Revenue has not enforced payment of income and excess profits taxes by the pools throughout the past fourteen or fifteen years--"

This is a fact which is not proved; it is our assertion.

"---(and by their respective and joint subsidiaries since they respectively commenced operations) has been prejudicial to the national interest and has involved discrimination against all taxpayers. This discrimination has been most marked in respect of our members as they are under the necessity of directly competing with the pools who are thus, in effect, subsidized and financed with public funds.

"10. Further delay in assessing and enforcing payment of all arrears of income and excess profits taxes due by the pools and their subsidiaries and in enforcing prompt payment of such taxes from now on as they become due will greatly aggravate and intensify the elements of prejudice to the national interest and of discrimination against other taxpayers which already exist. This will tend to speed the elimination of competitors of the pools, because such competitors, being currently required to pay and having heretofore been obliged to pay their taxes, will not have this tax money in hand to use in maintaining

and carrying on their businesses.

"11. The recent action of the pools in reducing handling charges below the cost of rendering the services involved is detrimental to the public interest because, first, it will operate to reduce to negligible amounts the income and profits which would otherwise be earned by the grain trade, and the taxes which would otherwise be payable by that trade, and second, continuance of these reduced rates will drive private enterprise out of the trade.

"12. The inevitable consequences of continuance of the conditions mentioned in the foregoing paragraphs will be that only the pools will survive, thus acquiring a monopoly of the grain trade.

"13. Our system of income and excess profits taxation will collapse and a totally new system of taxation will have to be devised if competitors of the cooperatives become incapable of making a profit from business operations and are, as a result, driven out of business.

"Patronage Dividends

"In view of the reference in the order in council to 'the making of payments commonly called patronage dividends' and of the fact that such payments have been made by the pools, we beg to submit our views as to the pertinent facts regarding them.

"These payments should not be allowed to the pools or any of their joint or respective subsidiaries as deductible expenses for tax purposes for the following reasons, namely:

"(i) They are merely distributions of profits made by the paying organizations to their respective members or shareholders;

(ii) The relationship to the paying organization

to do with, and does not alter or affect, the nature of a patronage dividend. This is determined entirely by the source or origin of the payment;

(iii) All these payments originate in and are exclusively derived from the aggregate profits of the paying organization;

(iv) No such payment is a disbursement or expense which, to use the words of the Income War Tax Act, is 'wholly, exclusively and necessarily laid out or expended for the purpose of earning the income' of either the then current taxation period or of any earlier taxation period;

(v) This being so and as such a payment is not expressly deductible as an expense for tax purposes by the paying organization under any provision of the Income War Tax Act, the amount paid cannot be deducted at all for tax purposes in respect of any period for purposes of calculating the taxable income of the paying organization;"

- (vi) Any change in said Act which would make such payments deductible expenses for purposes of calculating taxable income would necessarily have to be applicable to all businesses and would operate to enable all taxpayers engaged in business to vary the amounts of their taxable incomes at will from time to time. In times of high taxes, that is, when the government urgently needs tax money, prodigal payments of patronage dividends could be made by taxpayers at little or no cost to themselves. The cost would be borne by the public treasury. In times of low taxes, these taxpayers could restrict or eliminate the payment of patronage dividends and thus build up their surplus accounts at small cost to themselves;
- (vii) The amount of income and profits taxes collected in any taxable period would thus come to depend not so much upon the amounts of the earnings of business organizations as upon the amounts of patronage dividends paid in that period by such organizations, in their discretion;
- (viii) Even if such payments are or were taxed in the hands of the recipients, their exemption from income and excess profits taxes in the hands of paying organizations would result in a substantial diminution in the aggregate amount of taxes paid for the reason that paying organizations in the highest tax brackets would be stimulated by high tax rates to make such payments and recipients, if they paid taxes at all, would usually be subject to tax at much lower rates;
- (ix) Hence, the allowance of patronage dividends as a deductible expense for tax purposes would operate to destroy our present system of collecting taxes, on the basis of ability to pay, in respect of income and profits

derived from business operations.

"In connection with the foregoing statements, the following particular points are emphasized, namely:

(i) No pool organization has ever had, as at the time of declaration or decision by its directors to pay a patronage dividend, any obligation or liability to its members in respect of any grain previously bought from such members respectively, or in respect of the proceeds of such grain, if or when sold.

(ii) All pool patronage dividends have been paid out of earnings or profits previously received or made by the paying organization without any regard whatsoever to the various diverse sources from which such earnings or profits were derived.

(iii) Pool earnings and profits from which such patronage dividends have from time to time been paid have come, for example, from profits on export trade, interest on investments, profits from trading in grain with members and non-members, dividends from subsidiary or associated companies and charges for the storage of wheat, including, frequently, wheat carried over from previous years.

(iv) It does not change the character of the distribution of pool earnings or profits to call the payments 'patronage dividends' or 'savings' or 'excess charges refunds,' they still remain divisions and distributions of 'income'.

Legal Grounds

"The legal grounds in support of our representations have been disclosed in this brief in summary and abbreviated form. To the extent that it seems to be expedient as your hearings proceed, or if you so request at any time, we shall submit supplementary legal arguments and references to authorities.

Economic Grounds

"So far as concern the economic grounds supporting our representations, we have retained the services of John Lorne McDougall, Esquire, Associate Professor of Commerce of Queen's University, to submit his views to you. Professor McDougall will file a statement of such views in due course, and will, with your permission, appear before you in person at Ottawa after the submission of this brief to give evidence and to answer such questions as you may wish to ask him."

Dr. McDougall's report has been filed and he is here available to appear before you.

Our Representations

"Based on the foregoing, we strongly represent:

"1. That failure to enforce payment of income and excess profits taxes by cooperatives who operate grain elevators cannot be justified on legal, economic or equitable grounds and is detrimental to the public interest and, particularly, that such failure involves extreme discrimination against the members of this association and all other operators of grain elevators because they have not only to compete with such cooperatives for business but also have to pay such taxes."

When I refer to economic grounds I should like to say that Professor McDougall is the person who will supply this.

"2. That the cooperatives engaged in the operation of grain elevators should pay income and excess profits taxes in respect of all the income and profits derived by them respectively from such operations.

"3. That such taxes should be levied in respect of all past periods in which income or profits have been derived by cooperatives from the operation of grain elevators and

also in respect of the present and of every future period in which such operations are carried on.

"4. That the amounts of the income and profits of such cooperatives in respect of all past, present and future periods of operation should respectively be determined on precisely the same basis as the amounts of the income and profits of members of the association have been, are now and will be determined, as the case may be, in respect of such periods respectively.

"5. That the extent of the liability of such cooperatives for taxes upon and in respect of income and profits earned or made in any past, present or future period, should be determined on precisely the same basis as the extent of the liability of members of the association for such taxes has been, is now and will be determined, as the case may be, in respect of the same periods respectively, and that, particularly, but without derogation from the generality of the foregoing by this special mention, no so-called 'patronage dividends' or 'excess charges refunds' or any other similar payments or credits heretofore or hereafter from time to time made, paid or credited in any way or manner by cooperatives should be allowed as a deductible expense for purposes of determining the amount of the taxable income or of the taxable profits of cooperatives in respect of any period.

"6. That all the foregoing representations are applicable to all subsidiaries of the cooperatives referred to, whether joint or individual, and to member-associations of the Manitoba Pool and to all other parent and associated corporations of such cooperatives respectively.

"We submit that these representations merit your unqualified approval and that your report should affirm that they

carry your judgment.

"The whole respectfully submitted."

As I intimated to you, I should like to have Mr. Lamont step aside and have Mr. Thompson appear in the box to give information with respect to taxes, as referred to on page 38 of the brief. I suggest that you could then question him in relation to his testimony. Then Mr. Lamont or Mr. Reid or Mr. Hales could be put back in the box to answer any questions that are outside of Mr. Thompson's scope.

J. C. THOMPSON,

Partner, Peat, Marwick,
Mitchell and Company,
having been duly sworn,
testified as follows:

BY MR. HOWARD:

Q. Mr. Thompson, what is your occupation? A. I am a chartered accountant.

Q. And are you associated with or connected with any firm? A. Yes, I am a partner of Peat, Marwick, Mitchell and Company.

Q. How long have you been practising your profession? A. Since 1920.

Q. Have you any professional relationship with any line elevator company? A. Yes.

Q. What is that? A. We audit one of the line elevator companies in Winnipeg.

Q. Are you familiar with the Income War Tax Act and Excess Profits Tax Act? A. Yes.

Q. Have you had occasion to engage in any substantial amount of what we call tax work during recent years? A. Yes, for the past seven or eight years I have devoted a very substantial portion of my time to income tax work and engagements

under the Excess Profits Tax Act.

Q. Have you in that connection ever appeared before the Board of Referees? A. Yes, probably forty or fifty times.

Q. Did you ascertain the amount of income and excess profits taxes paid or payable to the dominion government for the period 1930 to 1944, both inclusive, by certain line elevator companies?

THE CHAIRMAN: What page is that?

MR. HOWARD: Page 38, at the bottom of paragraph 3.

THE WITNESS: Yes.

BY MR. HOWARD:

Q. How many companies were involved in your calculations?

A. Eleven.

Q. How does the aggregate extent of their operations compare with the extent of the operations of the three pools?

A. It is approximately the same.

Q. What is that approximate percentage of the total business that the eleven companies do in the trade?

A. 44.9 per cent.

Q. And according to your information the pools' activities are about similar in amount or extent? A. Yes, approximately the same.

Q. Those two figures add up to approximately 90 per cent. What type of company handles the remainder of the trade?

A. Milling companies, companies engaged in the export grain business and companies whose activities, while they handle grain cannot be classified in that type of activity.

Q. They have a limited -- A. A restricted operation.

Q. Have you included any of those companies that may have substantial or important other activities in your

calculations? A. No.

BY THE CHAIRMAN:

Q. Does that include the United Grain Growers? A. Yes.

BY MR. HOWARD:

Q. What was the amount of taxes found by you, income and excess profits taxes, to have been paid or payable by those eleven companies for the period 1930 to 1944, both inclusive? A. \$14,699,000.

Q. What was the source of information that you used in making those calculations and on what did you base your calculations? A. My calculations were based on financial reports, annual financial statements, in some cases supplemented by tax returns, where I acquired the information. Those statements and returns were furnished by companies belonging to the North-West Line Elevators Association.

Q. By the companies concerned? A. By the companies concerned.

Q. Direct to you? A. Direct to me.

Q. Has a statement of your calculations been given to the auditors of the Commission? A. Yes.

MR. PARKER: That is a statement of this \$14,699,000?

MR. HOWARD: Yes, a statement of the calculations.

THE WITNESS: How it was made up.

BY MR. HOWARD:

Q. Did you make an estimate of the amount of income and excess profits taxes payable in your opinion by the three pools for the same period, 1930 to 1944 inclusive? A. Yes.

Q. Upon what records and information did you base your calculations? A. From statements, public statements or printed statements furnished to me by the North-West Line Elevators Association.

Q. What amount did you estimate to be payable by the pools by way of income and excess profits taxes during that period? A. \$21,537,001, exclusive of interest and penalties and exclusive of the refundable portion of the excess profits tax.

Q. Since this calculation is made on a different basis than the previous calculation I think you might just as well tell the Commission what part or what amount of that \$14,699,000 is refundable. A. \$1,286,000.

Q. Now, Mr. Thompson, since this brief was filed with the Commission we have made a correction in the amount of those taxes.

MR. VAUGHAN: Could we have a similar figure for the \$21,000,000?

BY MR. HOWARD:

Q. What do you estimate to be the refundable taxes which have been omitted from your figure of \$21,537,001?

A. \$3,081,940.

Q. Therefore, to compare like with like you would have to add that to the amount of \$21,537,001? A. Yes.

Q. To get a figure comparable with the \$14,699,000? A. Yes.

Q. Or, alternatively, you would have to take off the \$14,699,000 the sum of \$1,286,000 if you wished to make a direct comparison of like with like in relation to the figure of \$21,537,001? A. Yes.

Q. Since this brief was filed we have had to make a correction in the amount of that tax liability of the pools and also to make corrections in schedule D which contains details of your calculations. I do not suppose that you would like anyone to suspect that the corrections were

necessitated by a mistake in addition so will you explain just how it comes about that those corrections would seem to be made necessary? A. The principal correction was in respect of the year 1930-31 for the operations of the Saskatchewan Pool Elevators Limited where I had in my first computation included or had not allowed as a deductible expense the patronage dividend paid in that year. The year 1930-31 was the last year of contract pooling and in my calculations for 1929-30 the patronage dividends were deductible as expenses and I felt in fairness and also believing that it would be on the conservative side that similar adjustments should be made in 1930-31 and the taxable income as first shown should be reduced by that patronage dividend. The other adjustments in the later years were minor and largely comprise corporation taxes paid in Ontario and elsewhere which in the operation of an ordinary commercial company would be allowed as deductible expenses.

Q. Then, in other words the correction was on the basis of later information that you obtained, either as to the status of patronage dividends of the Saskatchewan Pool in earlier years and as to other disbursements made? A. Yes.

Q. Have you provided the Commission with corrected copies of schedule D? A. I filed them with the Commission.

MR. HOWARD: If anyone here has not got a corrected copy, there are copies available.

BY MR. HOWARD:

Q. Did you prepare schedule D as amended, and now included in the brief? A. Yes.

Q. That is entirely your work? A. Yes.

MR. HOWARD: I am not cross-examining Mr. Thompson, and I should like to have you clearly understand the basis upon

which he proceeds in making his estimate.

BY MR. HOWARD:

Q. How do you account for the fact, as you have just told us, that you allow in an earlier year the patronage dividend as an expense and yet in later years you do not allow it as an expense, that is, the payments which they designate as patronage dividends? A. I thought that up to the year 1930-31 when contract pooling ceased it was a debatable item, and I felt I should be conservative in my calculations. I had in mind that in the year 1929-30 in the directors' report of the Saskatchewan Pool the patronage dividend was taken as an expense in the calculation of taxes. I felt in fairness that the same treatment should be accorded to the item in the following year. However, after 1930-31 in my view the nature of the operations changed and whether or not patronage dividends should be allowed as an expense was highly debatable. Therefore, I made my calculations on the basis of patronage dividends not being deductible. I may say that that same method is followed, not only by the pools but in respect of my calculations for the line companies in order that we may arrive at figures which are reasonably comparable.

Q. You say that this matter of the deductibility of patronage dividends is highly debatable. Is there any doubt in your mind as to the status of those dividends after 1930-31? A. Not since 1930-31.

Q. In making this calculation how did you treat the interest on the indebtedness of the companies concerned?

A. Again I had some doubt as to how to treat interest paid by the various pools to the provincial governments. However, I felt again that I should be conservative and in making my calculations I showed that as a deductible expense.

Q. In other words, if we may use the expression, you erred in favour of the pools? A. Yes.

Q. Did you give effect to any consolidation in the making of these calculations as to the number of the pools and their respective subsidiaries, or did you treat them as separate individual entities? A. I treated them as separate individual entities.

Q. In calculating the excess profits taxes how did you arrive at the amount of standard profits? A. In the absence of any information, as to what the pools might expect as standard profits if taxable, I took the factual standard. In other words, I took the average of the profits for the years 1936 to 1939 and used that as a basis of my calculation.

Q. That is in conformity with the Act? A. Yes.

Q. Under what circumstances would the pools or any of them perhaps obtain a different amount of standard profits? A. By application to the Board of Referees under the Excess Profits Tax Act.

Q. Have you included in this amount of \$21,537,001 any amount for penalties or non-payment of taxes or interest on arrears? A. No.

MR. HOWARD: Mr. Chairman, while Mr. Thompson is in the box I wonder if it would not be more convenient to have any questioning of him done now and then we can recall Mr. Lamont or Mr. Reid or Mr. Hales if there be any questions asked outside of Mr. Thompson's scope?

THE CHAIRMAN: That is quite all right.

BY MR. PORTER:

Q. I understand that you actually prepared and presented to the Board of Referees under the Excess Profits Tax Act the case of members of the North-West Line Elevators Association?

A. Of certain of the member companies.

Q. They presented their case as a group? A. First as a group representation, and then later individually.

Q. And the part that was presented as a group was the part that had reference to their depressed condition which arose out of certain climatic conditions? A. Yes.

Q. They were all in the same boat because they were all doing business in the same country which had suffered from drought and other natural disasters? A. Yes.

Q. So that the picture was common to those people?
A. Yes.

Q. It was common to their operations? A. Yes.

Q. You prepared and presented those cases? A. I assisted in doing so.

Q. You were the chartered accountant in charge of that operation? A. Yes.

Q. Now, Mr. Thompson, if you look at your record there for the standard period I think you will observe that Alberta had two years of losses; is that not true? In 1936, 1937, 1938 and 1939 were not there two years of losses? A. 1936-37 and 1937-38.

Q. Both years of losses? A. Yes.

Q. Under the Excess Profits Tax Act you take the statutory standard, being the average of those four years, and then if the business is depressed the board may take some other yardstick; is that not true? A. That is correct.

Q. Now the members of the North-West Line Elevators Association, doing business in Alberta, in competition with the Alberta Pool, during that period of 1936, 1937, 1938 and 1939, operated under climatic conditions which were common to both them and the pool, and they made representations that

they were depressed, did they not? A. Certain companies operating in Alberta.

Q. The companies which you represented? A. Yes.

Q. Claimed to have been depressed in that period?

A. Yes.

Q. When you made these calculations you were fully aware of the fact that the conditions which led the board to decide that certain of the companies doing business in Alberta were depressed because of natural conditions during the standard period 1936 to 1939, those conditions applied to the Alberta Wheat Pool? A. Yes.

Q. So that there is not any doubt in your mind that with two years' losses the Alberta Wheat Pool, if taxable, would have an identical case for urging upon the board that during that period it was depressed? A. Yes, I think so.

Q. So that these figures which only take the statutory standard profit are not to your knowledge what the board almost inevitably would have to use as standard profit for the Alberta pools, because if they were taxable and the board were considering it some other yardstick would be used?

A. In all probability.

Q. Because they could not treat them differently from the others who were doing business beside them and who claimed and who had been found to be depressed? A. I would presume not.

Q. You agree with that? All of these figures of yours, of course, are useless if your standard profit is changed. This estimate is meaningless if the standard profit is changed?

A. Well, I do not think they are useless.

Q. They are meaningless; perhaps I should put it that way. A. I have stated quite clearly that these things are

purely an estimate based on the facts which were available.

Q. They are based on an assumption? A. Yes.

Q. Which you now acknowledge is unlikely to occur, namely, that you take a standard profit base during the statutory period in which they had two years' losses? I mean, let us be frank about it; your figures assume a statutory standard period? A. Yes, in the absence of any --

Q. A statutory base in the standard period? A. Yes.

Q. I observe that eleven of the companies handling about the same volume of business paid \$14,699,000 in taxes, whereas on your estimate the pools handling the same volume are going to pay \$21,537,001. I see you are smiling. You are not seriously urging that the tax obligation of the pools under this statute is represented by that figure of \$21,537,001, are you? A. This is an estimate based on such information as is available.

Q. It is an estimate on the basis of an assumption that from your knowledge of the actual conditions you know is unsound? I put that to you. A. To the extent that the standard profits have not been determined.

Q. And when you change the standard profits to some other base you change the figures to something that you cannot forecast until you know what that standard profit is?

A. Yes, that is correct.

MR. PORTER: Mr. Chairman, I am going to put a question to the witness but I am going to ask him not to answer it until everyone has had a chance to object. I may be moving into something which the Commission may decide I have no right to do.

BY MR. PORTER:

Q. You are familiar with the awards that were made in

the cases of the member companies of the North-West Association by the excess profits board?

MR. PORTER: If anyone has any objection to my going into that, I should like him to state it.

MR. HOWARD: You have just stated it as a fact.

MR. PORTER: I am putting it as a question.

BY MR. PORTER:

Q. You are familiar with those awards, are you not?

A. Yes.

Q. What was the interest return allowed on the capital employed in those awards?

MR. HOWARD: I do not think the witness should be asked that. Whatever information he has on that he would have obtained in his professional capacity.

MR. PORTER: I have no quarrel with that position. However, I should like to state that that evidence is available and could be examined confidentially by your auditors.

THE CHAIRMAN: I think that is proper. For that reason I will maintain Mr. Howard's objection.

MR. PORTER: I have no quarrel with Mr. Howard's objection. I was bound to make that approach, I think.

MR. PARKER: At this stage perhaps we might have some assurance from Mr. Howard that such information which the Commission requires will be furnished upon request. We have no such assurance at the moment, I do not think.

THE CHAIRMAN: There will be no objection to that, will there, Mr. Howard?

MR. HOWARD: What information?

THE CHAIRMAN: The information arising out of Mr. Porter's question.

MR. HOWARD: I have no competency to promise that.

THE CHAIRMAN: Can Mr. Thompson give it, or any of your clients?

MR. HOWARD: The North-West Line Elevators Association cannot undertake to produce information regarding taxes in connection with individual members.

THE CHAIRMAN: I think we will have to leave it at that, Mr. Parker. We have made a request for it. Mr. Glassco, you see what Mr. Porter is referring to.

MR. GLASSCO: Yes, Mr. Chairman.

MR. PORTER: That is the best example we could have of a chestnut in front of a plate glass window.

THE CHAIRMAN: At the moment not one of the line elevators is in the box.

MR. PORTER: I realize that. I should like the Commission to know where to get this information because I do not think it springs at all from any voluntary act on the part of any member of the association. This is a matter of record. This concerns the application of the income and excess profits tax acts which I think under your reference you are bound to examine.

BY MR. PORTER:

Q. Those cases were filed in the ordinary course under that act, Mr. Thompson? A. Yes.

Q. And are a matter of record in the appropriate department? A. Yes.

BY MR. MILLIKEN:

Q. Mr. Thompson, what Mr. Porter has just said to you about Alberta, about Alberta having two years in which they had losses during the standard period, is also true of Saskatchewan, with the addition of a third year of loss, is it not? A. In the case of Saskatchewan Pool Elevators there was a substantial loss in the year 1937-38.

Q. And in 1936-37 and in 1938-39? A. No, not after the adjustments are made. There was a small profit.

Q. Mr. Thompson, did you not notice that in those three years they did not take any depreciation? A. I did not have full information on that, so I will say this, that if depreciation had been claimed in those years they would have showed a loss.

Q. Each of the three years would have shown a loss; and I am now suggesting to you that from information already on file with the Commission it is quite apparent that they did not take depreciation in those three years. Therefore they had three years of losses instead of two, during the standard period? A. If depreciation was not taken.

Q. I am not clear, Mr. Thompson, or I am not sure I follow you when you say you allowed patronage dividends in 1929-30 and 1930-31 for Saskatchewan Pool Elevators, and then decided you would not allow them any more. What distinction do you make between the patronage dividends paid prior to 1931, and those paid subsequently? A. I regarded the period prior to 1930-31 as the contract pooling period.

Q. What had that to do with the contract dividends of pool elevators? A. Because in the case of patronage dividends during the contract pooling period, those dividends presumably would go to members of the wheat pool.

Q. That is exactly what happened and what has been happening ever since, from the evidence that has been placed before the Commission; they are doing the same thing to-day, going to the members of the wheat pool. I am curious as to the distinction? A. Except that prior to 1930-31 the earnings would be distributed on the basis of the grain handled by the pools, according to grade and quality.

Q. No, sir. It is the grain handled by the pool elevators. The pool had nothing to do with the patronage dividends paid by Pool Elevators prior to 1930-31, any more than they have had since. I thought you did not understand the situation when you made that statement. A. I looked upon it after 1930-31 as a different phase of the operations of the pool than before the year of cut-off between the two.

Q. And you overlooked the fact that in both periods it was the Elevator Company alone that paid the patronage dividends, and it had nothing to do with the contract pool. You overlooked that, did you? A. No, I do not think I did.

Q. You did not overlook it? A. No.

BY MR. STEER:

Q. I do not often seek to dissociate myself from you, Mr. Thompson, but I should like you to make it clear that you had no retainer from the United Grain Growers in connection with these investigations? A. No.

MR. PORTER: Now, my Lord, because this information is confidential, and I entirely agree that it should be, you will appreciate that any attempt to break down these figures to demonstrate their unsoundness, by further pursuit of the comparative cases of the trade and the pool, is at an end as far as I am concerned. I can only say to you that you will have to rely on something else to bring them to something

approaching a common basis, or to urge the other facts which may reduce these taxes still more below the trade standard.

THE CHAIRMAN: As far as I am concerned certainly I will have to rely on someone else.

MR. PORTER: I mean the Commission will have to rely on some other source of information, perhaps through its own auditor.

BY MR. VAUGHAN:

Q. Have you attempted at all, Mr. Thompson, to make an estimate based upon the standard profits as allowed for the line elevators; that is, taking that as a basis and making a calculation for the pools? You know on what basis the standard profits were allowed. Adopting that same basis, what would be the comparable amount with the \$14,000,000; that is disregarding for the time being the \$21,000,000?

A. I have not made a calculation along those lines.

Q. That would be possible, would it not? That is, knowing on what basis the company was dealt with -- ?

A. Yes. It would be only an approximation, because of the varying circumstances and the varying awards which were made to the line elevator companies.

Q. On those same conditions -- they were applied by the government to the pools, were they not, as to the basis of capital employed, and so on, and the different points taken into account? A. Yes, generally speaking.

Q. They would be taken into account in connection with the pools as well? A. Yes, I think so.

Q. Then taking the same basis, would it be possible to make up an estimate? A. Yes, I could give it to you.

MR. VAUGHAN: I wonder if we should ask Mr. Thompson to do this.

THE CHAIRMAN: I understand that is what we should ask from Mr. Glassco; that is my understanding.

MR. VAUGHAN: Very well.

MR. PORTER: And at that stage I would like Mr. Glassco to give us some opportunity to see those figures, or to give our auditors some opportunity to see them, because there are other allowances which we submit would be urged even in the event of our taxability, which would be available to reduce the amount. The figure which would result, in other words, from a comparative structure now, as Mr. Vaughan suggests, would result in the maximum tax picture of the Alberta Pool, to which there would be other deductions which in our opinion would be made by a board. It can only be an estimate.

THE CHAIRMAN: You know, Mr. Porter, we hope to complete our work before the end of 1946.

MR. PORTER: May I put it in this way, then. We have the right to hope you will complete the work, and I am only urging that this is one of your jobs. You have my sympathy, but I am afraid you also have the job.

THE CHAIRMAN: We will do our best I can assure you.

BY MR. PARKER:

Q. There is one thing I did not quite follow through. In making your estimates, did you say that you worked them out on the basis of each subsidiary paying its proportionate share, or have you lumped them all under the three pools?

A. In the case of the Alberta Pool there are no subsidiaries, as such. In the case of the Saskatchewan Pool I treated each company separately: Saskatchewan Co-operative Wheat Producers Limited, Saskatchewan Pool Elevators, and Modern Press Limited.

Q. You just took three companies as taxable, three subsidiaries? A. Yes.

Q. What about the others? A. The others in the Saskatchewan Pool?

Q. Yes? A. Well, the construction company is not operating, and in the case of the Saskatchewan Pool Terminals the profits earned by the terminals were paid to Pool Elevators and are included in my calculations as part of the earnings of Pool Elevators.

Q. At any rate whether or not the amounts which you have calculated are fair estimates, I suppose you would agree that if you did make up an estimate on the suggested change of the standard profits, as has been put to you, it would show a very great reduction from \$21,000,000? You are satisfied of that? A. Yes, I think it would.

Q. Is there any reason why it should not be approximately the same as the line elevators, doing the same amount of business; or would there be factors which might make it a great deal more? A. I hesitate --

Q. Why hesitate? A. Because in the first place I do not know what the standard profits might be awarded to these companies. They could retain 70 per cent of that standard.

Q. If it was made on a comparable and equitable basis with the line elevators, would you expect the result to be substantially different? I assume the department would give the same equity to the pools in fixing their standard profits as they meted out to the line elevators? A. But you are asking me if it would reduce the figure from \$21,000,000 to \$14,000,000?

Q. I am asking you if you would expect that the taxes payable would be approximately the same, since you said they

Mr. Thompson

were doing approximately the same amount of business? A. I think they would be approximately the same.

BY MR. ELLIOTT:

Q. You have seen quite a number of elevator accounts in different years, and the taxes imposed upon the incomes?

A. Yes.

Q. Is it true that such taxes would vary from year to year and from elevator company to elevator company, if estimated upon a per bushel basis? A. Oh, considerably.

Q. So that some companies in some years might have zero taxes per bushel, and other companies in the same year might have some taxes per bushel? A. Yes.

BY MR. PARKER:

Q. In calculating standard profits for the pools did you apply what is known as the "drop a year" provision?

A. Yes.

Q. Did you allow for increases in capital employed during the standard period? A. Yes.

Q. Were your calculations exactly on the basis of a company which calculated its standard profits on a factual basis? A. Yes.

Q. You are familiar with this order in council under which this Commission is ascertaining facts? A. Yes, I have read it.

Q. And you have been following the Commission for a good portion of its meanderings about the country, listening to the evidence? A. Yes.

Q. Can you suggest to me how or in what way the amount of the taxes that might be payable by the pools, if they are taxable, is of any assistance whatever to the Commission in assessing these problems, whether it be \$3,000,000, \$6,000,000,

\$16,000,000 or \$21,000,000, the figure you estimate? Does it make any difference in your view, and if so how? A. It would show the comparison between the wheat pools and the private grain trade.

Q. Would it show anything more than that one pays a tax at the moment and the other does not? Let us assume that the principle is established that the pools should pay taxes. At the moment I do not see that it is any concern of the Commission to be interested in calculating the particular amount of the tax. Is that not for somebody else to do?

THE CHAIRMAN: Well, is it designed to show the loss of revenue?

THE WITNESS: Yes, I think so.

BY MR. PARKER:

Q. That is what you think? A. In other words I have ascertained that the private grain trade has paid \$14,000,000 odd in taxes. The pools, if taxable, would pay a very substantial sum of money, the equivalent or more; and there is, I think, that comparative position which falls within the terms of the order in council.

MR. PARKER: Very good. That is all.

BY MR. SCARTH:

Q. Dealing with Manitoba, Mr. Thompson, did you take the local cooperative elevator associations, each in its individual capacity, in arriving at these figures? A. No.

Q. Then you took the Manitoba Pool Elevators as owing all the assets, did you? A. Yes.

Q. Were you aware at that time that the elevators were individually owned by the locals? A. Yes.

Q. You were? A. Yes.

Q. So it might make a very great change in your figures if you had considered them on the basis of the individual

elevators? A. Well, it would depend on whether or not the Manitoba Wheat Pool as such was considered taxable as a separate entity, from the local associations.

Q. Quite. But for the purpose of your figure you assumed that to be true? A. Yes. In the absence of any information regarding the 180 locals, I had no other option.

Q. So if you did come to the conclusion that the locals were taxable individually, that would make a very great change in your figures, would it not? I mean, each would be entitled to its own exemption under the standard profits? A. Yes, it would change those figures.

Q. Mr. Thompson, did you compile the figure shown on page 4 of the brief, of the present value of the investment in elevators owned by members of this association, which is estimated at approximately \$65,000,000? A. No.

Q. You have no knowledge of that? A. I know how it was compiled, but I did not compile it.

Q. Could you tell me how it was compiled? A. It was compiled by an officer --

Q. I do not want the mechanics of it. A. It was a figure ascertained by the North-West Line Elevators Association by contact with its individual companies.

Q. Then I would like to ask you this question. Can you tell me how it is divided up, that is between terminals and country elevators? A. No; I have no knowledge of that. As far as I am concerned I have no factual knowledge as to the component parts. I simply know it was obtained through the officers of the association, by contacting each member company.

Q. You cannot give any information as to how that figure is made up? A. No.

THE CHAIRMAN: Mr. Lamont probably knows that.

MR. SCARTH: Then I will ask him. I thought I would ask

Mr. Thompson while he was in the box.

BY MR. VAUGHAN:

Q. On page 45 of the brief, in the representations made there, I read this, leaving out the odd word here and there:

"-- and that particularly no so-called 'patronage dividend' or 'excess charges refunds' should be allowed as a deductible expense for purposes of determining the amount of taxable income or taxable profits of cooperatives in respect of any period."

How would you distinguish between what is a part payment that is due to a shipper, and what is profit? Are not both those elements contained in a patronage dividend? A. A patronage dividend, in my view, is a payment which is made after the event, based on the unit of volume, and payable out of earnings, if they are made.

Q. That is the method of distribution, but does not that payment or patronage dividend consist partly of a balance owing to the shipper and partly of what might be called a profit or saving in the handling? A. It would depend upon the circumstances and the arrangements between the shipper and the agency or the company.

Q. Is that not what happens as a rule, that there is a payment made, probably more under ordinary conditions than under war conditions, and there is a balance paid later on, which consists partly of what is due the shipper and also in that payment there is whatever saving is made through handling. What bothers me is how you are going to distinguish between what is due the shipper and what might be called a profit or saving? A. It depends, I think, on whether the company is acting as a principal or as an agent. If it is acting as a principal and buying outright, then any subsequent

payment is purely a patronage dividend. If it is acting as an agent for resale, with the proceeds to go to the shipper, I think that is a different thing entirely.

Q. Well, of course these pools or at least some of them are said to be agents, you know? A. Yes, I know.

Q. In that case how would you divide the patronage dividend between a payment owing to a shipper for his actual grain delivered, and the profit? A. It would depend on whatever contract or arrangement existed between the grower and the pool.

Q. You think that can be determined all right? A. Well, the terms of the contract or the basis on which grain was handled would determine it.

Q. You think it can be determined all right? A. Yes, I think so.

BY MR. SCARTH:

Q. I should like to ask you a couple more questions, Mr. Thompson, if I may. Supposing a farmer brings in his grain and instead of being paid on that date the full price, as you call it, or the full market value as of that day, he is given half the amount and then is paid the balance at the end of the year, after the costs are determined. Would you call that a patronage dividend? A. No, not if that arrangement existed. I should like to clarify that, to this extent. It would depend upon the terms of the arrangement or contract. It is the type of question to which I do not think I can give a flat answer.

Q. I am just testing your theory, that is all. If he is paid half the money you will admit, then, that there must be an accounting at the end of the year? A. It would appear, then, to be an agency arrangement.

Q. And the full balance is paid, after determining the costs? A. Yes.

Q. Would you not say that was a patronage dividend?

A. Under such conditions?

Q. Yes? A. No, I would not call it a patronage dividend.

Q. What would you call it; a profit? A. I would call it accounting for the balance of the purchase price or the sale price.

MR. PORTER: That is refreshingly new.

BY MR. SCARTH:

Q. Now just tell me what you mean by accounting. Perhaps that is where we are going off? A. In the case you have given, where a man received half or approximately half of what was ultimately paid to him, then when he received the balance the agent is paying to him the proceeds of the sale, less cost and expenses.

Q. That is right. Then we are agreed on that? A. Yes.

Q. Then what is that balance of the proceeds that is paid over to him? Do you call that a patronage dividend?

A. No, I would not call that a patronage dividend.

Q. He is simply paying over to the farmer the balance of the return from his grain, after deducting costs? A. Yes.

Q. Take it a little bit further, then. Say he receives up to 95 per cent of the total. Is the principle any different?

A. It would depend upon the terms of the agreement between the shipper and the company.

Q. I have not mentioned an agreement. We will say he brings his grain in to the cooperative and he gets 50 per cent at the start. Would that not of itself create an obligation? There is a balance coming to him at the end of the

year? A. Yes, if those were the sole conditions.

Q. And you say that the principle changes according to the amount that is paid to the farmer in the initial payment?

A. No, I do not say the principle changes.

BY MR. ARNASON:

Q. At the top of page 37 there is reference to the relatively large increase in the volume of business done by cooperatives in 1943 as compared with 1942, and then the paragraph goes on to indicate that private enterprise is falling behind, presumably to the same extent indicated by this figure. Assuming that to be the situation, do you not think this large increase in the volume of business done by co-operative organizations in 1943 as compared with 1942 was due in considerable measure to the general improvement or increase in the volume of business done in the country as a whole, particularly that part of the business done relating to the marketing of agricultural products? For example, in the year 1942 western Canada marketed one of the largest crops in its history. I just wondered whether you would not attribute at least a considerable part of this increase to a general upswing in business conditions? A. I do not know if the answer to that comes within my province.

Q. Perhaps if you do not care to answer it --

MR. MILLIKEN: I intended to draw your attention, Mr. Arnason and Mr. Chairman, before the day was over, to some figures in that connection. In 1942, following along the idea expressed in these figures, the Saskatchewan Pool Elevators handled 59,000,000 bushels of grain, which was 42.43 per cent of the Saskatchewan crop. In 1943 Pool Elevators handled 109,000,000 bushels of grain, which was 39.71 per cent of the Saskatchewan crop. In other words

Pool Elevators alone handled 50,000,000 bushels more, and at the same time handled a smaller percentage than it did in the previous year. I think perhaps that answers the question as to whether these figures mean that the private trade has been losing business. By the way, the figures I have just quoted to you appear in the annual reports of the Wheat Pool, which are filed with you.

BY MR. VAUGHAN:

Q. Just to clarify that matter of patronage dividends, perhaps I might ask one more question, and this follows the questions Mr. Scarth asked. By "patronage dividend" I take it now you do not mean a balance owing on account of crop at all. What you mean by "patronage dividends" here is what might be called profit or saving, having no reference to any balance that might be owing on account of grain or crop of any kind? A. That is correct.

Q. That refers to just what might be determined to be the profit or saving? A. Yes.

THE CHAIRMAN: Is there anything further from this witness?

MR. HOWARD: I will not ask any further questions.

THE CHAIRMAN: Then this might be a good point to adjourn.

---The Commission whereupon adjourned to meet again at 2.15 p.m.

- - - -

Ottawa,
Tuesday,
May 1, 1945.

The Commission resumed at 2.15 p.m.

The Examination of Mr. Cecil A.R. Lamont, continued

BY MR. PARKER:

Q. Mr. Lamont, you have read carefully the brief presented this morning, I take it. A. Yes.

Q. And assisted somewhat in the preparation of it? A. Yes.

Q. And, as stated by counsel, Mr. Howard, you have knowledge of some of the facts alleged in the brief? A. Yes.

Q. I think you said already that to the best of your knowledge and belief all the facts alleged in the brief are true? A. Yes.

Q. I was wondering if you could give us some idea of how many of the facts, or of what particular facts in the brief you have any knowledge. Is it all a matter of information and belief? A. I have general knowledge of all of them, and we have people here who have a more specialized knowledge in respect of some of them.

Q. What I mean is this: have you any specific personal knowledge of any of the particular statements or conclusions in your brief, or is it all just general hearsay knowledge that you give, leaving it to some other persons to prove that which it may be necessary to prove. A. Well, it is not hearsay. It is knowledge from actual contact. But, as to the law, I will leave that to counsel.

Q. I am not speaking about the law, at all. And, I am not talking about any matters which may be the subject of argument. Rather, I am merely talking about statements of fact. A. I have knowledge of them, yes.

Q. All right. For instance, take the reference where you state that the valuation of the capital assets of these eleven companies is \$65,000,000.

THE CHAIRMAN: I believe that is found at page four of the brief.

MR. PARKER: Yes.

BY MR. PARKER:

Q. Did you supply that information to those who were preparing the brief? A. We asked the member companies for their valuations.

Q. And you received whatever they gave you, and passed it on? A. The general manager of the association passed it on to me.

Q. And the \$65,000,000 is the sum total of the figures thus received from the member companies? A. Yes.

Q. Have you any knowledge as to the basis upon which they made their calculations, or any of them? A. No, each company supplied its own figures.

Q. Have you in your possession, or has the association in its possession, the details of how those valuations were made up? A. No, the companies individually have those details.

Q. You have not got them? A. No.

Q. Can you tell me whether it was on cost, or cost less a proper scale of depreciation? A. I would say it would be the depreciated value.

Q. The depreciated value. A. Yes.

Q. Upon what do you base that statement? Have you any knowledge about it, or is that only an assumption? A. If you calculated the value of the 3,000 elevators at \$10,000, that gives you \$30,000,000; and the terminal capacity at 30 cents it gives you the other \$35,000,000.

Q. You have a general knowledge of all these companies' holdings. A. Yes.

Q. You have visited them all, and you know them all, A. I have not seen them all, no.

Q. You know something --- A. If you see one country elevator you have seen them all.

Q. But from your knowledge of the companies you are satisfied that the figure is approximately correct.

A. Yes, it is a reasonable figure.

Q. Then, turning to page twenty-three of your brief, and referring particularly to the paragraph at the bottom of the page, we find that you deal with points of similarity between the pools and subsidiaries on the one hand and the ordinary joint stock companies on the other.

This is what you say:

"Fourth: No 'member' or shareholder, as such, of any of them, has any title to any of the corporate property or assets or to any property or assets of any subsidiaries, absolute ownership...."

And I call attention to the words "absolute ownership" ---

"....of all such property and assets being vested in the corporation concerned."

Now, you heard the evidence ---

THE CHAIRMAN: Mr. Howard qualified that this morning, did he not?

MR. PARKER: Yes, but I think his qualification had reference to No. 3.

THE CHAIRMAN: I thought this was the one, but I may be wrong. Perhaps you are right.

MR. PARKER: I think he made the exception with regard to No.3, where he said it was not quite correct.

He pointed out that he should except from the statements therein contained the Canadian pool agencies and the insurance companies. I do not think he made any modification to No.4.

BY MR. PARKER:

Q. You state in your brief, "absolute ownership of all such property and assets being vested in the corporation concerned." I take it you have no particular knowledge of that statement yourself. A. We mean our knowledge from the perusal of the pool financial statements.

Q. It is set up on the assumption that the organizations referred to in the statement are owned by the corporations. A. By the pool corporations.

Q. That is what you base it upon. A. Yes.

Q. Nothing else? A. No, nothing else -- other than the pool financial statements.

Q. Is there included in that the grain in the inventory? A. The pool financial statements deal with inventories.

Q. We have heard the evidence from some pool that a lot of the grain in their custody or possession -- and I think I am right, because it is shown in their statement -- was not owned by the corporation at all. They were acting solely as trustees. You heard that evidence, or evidence to that effect? A. Yes.

Q. Are you in a position to contradict that evidence, which I suggest you are doing in the statement, or do you wish to modify it? A. It depends upon how the grain was being handled.

Q. Yes. A. For instance, in respect of coarse grains which they buy outright, they would hold title.

Wheat for the wheat board, they naturally would be handling on behalf of the wheat board, and would not hold title to it.

Q. It would not be their property. A. No, that is correct.

Q. May it not also be true that some of the grain which does not belong to the wheat board, at all, but belonged to pool members, on an agency basis or consignment basis, might not be vested in the corporation at all? A. In carload lots it may still remain with the shipper.

Q. It may not be the property of the association. A. But they are not handling it; that is, the purchases are not on an agency basis.

Q. If you know that, all right. You have heard it said that in some cases it was vested in the member. Are you, in effect, disputing that? A. Yes.

Q. Then, turning to page twenty-seven, and referring to the third paragraph on that page, which reads:

"So far as concerns the exemption from tax of the income of subsidiaries of the pools, this subsection can have no application in a case where the parent companies cannot bring themselves within the scope of the subsection. In any event, such exemption would apply only to those subsidiaries of cooperative companies which were organized 'for the purpose of financing their operations.'"

It is this last sentence to which I draw particular attention ---

"None of the subsidiaries of the pools was so organized."

In view of the evidence you have heard during the last

week, do you think that statement needs any modification?

A. No.

Q. You do not. A. No.

Q. Take, for instance, the United Grain Growers; do you include them? A. No, they are not included.

Q. They are not included? A. No.

Q. Take the insurance company, which was organized primarily, as I understand it, for the purpose of carrying the pools' insurance; it does do that sort of thing?

A. Yes.

Q. I suggest that that is the very purpose -- and the evidence shows it -- that it was organized for the purpose of helping the various corporations to carry on this function, instead of being carried on as a department.

A. I do not agree with that.

Q. You do not? A. No.

Q. Notwithstanding the evidence you have heard.

A. They were organized for the purpose of either carrying on the insurance, or a portion of the insurance on the pools' buildings, or for insuring on an agency basis.

Q. If you do not, you do not think it could squarely come within the provisions of that section, that its purpose, to use the words of the statute, was "for the purpose of financing their operations." I suggest that the word "financing" does mean actually for the purpose of raising funds, or financing in the sense it is sometimes used in connection with financing a company. A. That would not be my understanding of the statute.

Q. You do not read the word "financing" in that broader sense, that it would assist them in carrying on their business? A. No, certainly not as applied to

pool insurance companies.

Q. Then, at the bottom of page thirty, and the top of page thirty-one, we find this:

"These corporations have functioned at all times as separate legal entities, carrying on trade and business for their own account and risk."

That may be true, but is it not true that these companies, or some of them, are carrying on business quite apart, and not necessarily on their own account and risk, on behalf of their members; is not that statement only true in part? A. They are carrying on business with their members.

Q. And for their members, and not altogether for themselves. A. They are carrying on business ---

Q. On whose account? A. I say on account of themselves, with their members.

Q. You will not go so far as to say that they do some business on account of their members, using "account" in the same sense as you use it? A. They do business with their members.

Q. And you continue in the brief:

"When they have bought a member's grain, it has been bought without reservation and under no obligation or duty, express or implied, to account for its subsequent use or disposition."

Do you not think that that needs some modification, in view of the evidence we have heard? A. No, none at all.

Q. Have you not heard evidence to the effect, whether you believe it or not, that in some cases they do handle members' grain under an obligation, as one witness put it-- it may be a moral obligation, or a duty, and expressly

stated by some agreement or statute--it was at least implied in their course of conduct that there was certainly either a moral obligation, and a very strong one, or a pretty clearly implied obligation to make some account to the member's credit. Is there not an abundance of evidence to that effect which you have heard?

A. I have heard this moral obligation claimed, but I do not take much stock in it.

Q. You do not take stock in it? A. No. There is a moral obligation in connection with their reserves also, but they are not carried out.

Q. I am not putting emphasis on the moral obligation; I am talking about the other kind of obligation which may be implied from the course of business, or from the whole set-up -- from the method of doing business. It is an obligation which any court of equity would likely ---

MR. FILLMORE: I do not wish to interfere, but my learned friend is getting into pretty deep water, so far as Mr. Lamont is concerned. He does not know what obligation would or would not be enforced in a court of law.

MR. PARKER: I do not think it is a statement of law.

THE CHAIRMAN: I think it is a statement of law.

MR. PARKER: In the brief, do you mean?

THE CHAIRMAN: Mr. Fillmore can answer that, I think.

MR. PARKER: If it is a question of law, I shall not press it. If the witness feels he cannot answer it, we will let it go at that.

BY MR. PARKER:

Q. Then, coming down to the bottom of page thirty-one we find this:

"As for the doctrine of 'mutuality' there has never been since 1930, any semblance of identity between

the pools or any of their subsidiaries and any member."

Is that a question of law, too? A. I would rather leave that to the legal profession.

Q. Because it is a question of law, or because it is something of which you have no knowledge? A. I would rather leave it to the solicitors for discussion.

Q. Very well. As to the word "mutuality" do you know what that means? A. I would take it that "mutuality" is a term which is more applied to a group, such as an insurance group, which is trading entirely among themselves, and where no outside group enter into the transaction at all.

Q. All right; that is the sense in which you use the word in this brief, is it?

MR. FILLMORE: Yes.

MR. PARKER: Then, if that is so, we will leave it.

MR. FILLMORE: It is apparent.

THE CHAIRMAN: The House of Lords has struggled with that question, I believe.

MR. PARKER: Yes, but it seems to me I have heard other laymen who did not hesitate to reverse the House of Lords on it, though. I thought perhaps this witness might do so too.

BY MR. PARKER:

Q. Then, at page thirty-two, just for purposes of clarification, I refer to that paragraph in the middle of the page which states:

"It is obvious that the farmer will patronize the elevator at which he obtains the highest price or the lowest handling charge. Consequently, to remain

in business, all line elevator companies and the United Grain Growers' Limited had to put the reduced charges into effect regardless of the fact...."

We have a fact at last, anyway --

"....regardless of the fact that the services rendered must be performed at a loss."

To what services are you referring? A. With respect to this particular paragraph I should think Mr. Reid or Mr. Hales, who are in direct competition, and who meet this competition out in the country and are actually operating elevators, would be in a better position to speak. They can probably give you a better answer than I can. I could give it to you in general terms, but that is all. They could tell you exactly.

Q. This statement, which finds its way into the brief, comes from you or from Mr. Hales. A. It comes from our member companies.

Q. Your member companies. A. Yes, based upon their ---

Q. And they are not here. A. ---based upon their experience in the operation of elevators.

Q. Whose services are they -- pool services or services of the line elevators? A. Services rendered by the elevators.

Q. You are not suggesting that the reduction which was made by the pools last year results in their carrying on that part of their business below cost? Do you say that? A. They say that, themselves.

Q. Never mind what they say; I am asking you what you say. A. We say that it is carried on at a loss, also.

Q. By the pools? A. That particular service.

Q. By the pools? A. Yes, by the pools and by ourselves.

Q. Why do you say that; on what authority do you make the statement that the pools, when they reduced their handling charges from 3 cents to 1 cent -- that the 1 cent was below cost? On what authority do you make that statement. A. We have filed with you a copy of the Alberta Wheat Pool budget in which they say that.

Q. Does it apply only to Alberta? Does it apply to Saskatchewan too? A. The cost of handling grain is not lower in Saskatchewan and Manitoba than it is in Alberta.

Q. You make the statement that by handling grain at 1 cent they are handling it below cost. A. Yes.

Q. And that applies to Saskatchewan, Alberta and Manitoba. A. Yes.

Q. And to the United Grain Growers. A. Yes.

Q. And, of course, to yourselves. A. Yes.

Q. The line companies. A. Yes, that particular operation.

Q. If it was segregated, and could stand on its own feet, it would be below cost. A. Yes, if there was no storage charge being earned, in addition.

Q. Are you in a position to say--and perhaps this is not relevant--that the three cents made a profit; did it? A. Not necessarily.

Q. Was the three cents still below cost? A. Yes.

MR. FILLMORE: Perhaps Mr. Lamont is not so competent to answer that question, as he is not an actual elevator operator. Perhaps he is not competent to say that.

MR. PARKER: He is sufficiently competent to say that one cent is below cost. How far can he go?

BY MR. PARKER:

Q. Is 3 cents below cost? A. It would depend upon the volume passing through the elevator. Seven cents might be below cost, too.

Q. I beg your pardon? A. Seven cents might be below cost, if you did not have a sufficient volume passing through.

Q. When elevators are working at full capacity, as they have been during the past season, and for some seasons before, where would you draw the line? A. The elevator might be on full capacity; you might have it filled up once, and if you could not move it out and have it handled continuously you are not working at capacity.

MR. FILLMORE: I should like to make a correction. Mr. Lamont stated that we had filed a copy of the Alberta budget. I am not sure as to whether I did that or not. My recollection is that, in view of what Mr. Purdy said, I did not put it in, because it was covered by Mr. Purdy's statement. As he made the statement here, it is my recollection that I did not file the budget.

THE WITNESS: We could file it, could we not?

MR. PORTER: That is quite right.

MR. FILLMORE: Mr. Purdy stated it in the witness box.

BY MR. PARKER:

Q. I now turn to page thirty-four where, on the lower part of the page, you purport to summarize certain articles which, in turn, set forth certain contemplated expansion.

MR. FILLMORE: It is a verbatim copy.

MR. PARKER: Is it?

MR. FILLMORE: It is not a summary, as I understand it.

THE CHAIRMAN: The article was filed to substantiate these suggestions.

MR. PARKER: It is not in quotation marks. Is it an exact quotation?

MR. FILLMORE: Yes.

THE CHAIRMAN: It is a summary of an article which has been filed as an exhibit.

MR. PARKER: A direct quotation.

MR. FILLMORE: It is an extract from it, with numbered paragraphs.

BY MR. PARKER:

Q. You have no knowledge as to whether or not that is their programme, other than as stated in the article.

A. I have also read it in the Saskatchewan Wheat Pool directors' report.

Q. Now, turning to page thirty-six, I would suppose that that quotation from the Co-operative Consumer, in paragraph four, is not put in there at your suggestion; I suppose your counsel was responsible for it?

MR. FILLMORE: I should like to tender this issue of the Co-operative Consumer. I have no way of proving it, as it would be proved in a court of law.

THE CHAIRMAN: No question has been raised as to the accuracy of this quotation.

MR. PARKER: My only point is this: why was it put into the brief, at all? What possible relevancy has it?

BY MR. PARKER:

Q. Why was it put in there? A. We supplied the information to counsel.

THE CHAIRMAN: This is a transcription of the article appearing in the paper.

MR. PORTER: I do not know what it is. This morning

this matter was described as pleadings. I suggest that the onus does not now shift to me, to question everything in the brief.

THE CHAIRMAN: File the article, then.

MR. PORTER: Would it not be more proper to prove it.

BY MR. FILLMORE:

Q. What is that? A. This is a paper which was mailed to me, upon the payment of a subscription fee, to the Co-operative Consumer, and which bears my name.

BY THE CHAIRMAN:

Q. And do the paragraphs at page thirty-six of your brief refer to that article? A. Yes.

THE CHAIRMAN: It will be filed.

MR. MILLIKEN: I wonder what this is supposed to be. Is this supposed to be evidence as against the wheat pools? What is this paper? Is anything that is published in a newspaper evidence against us? Certainly it is not our paper.

THE CHAIRMAN: What is the paper?

MR. FILLMORE: It might come under the heading of general information.

THE CHAIRMAN: By whom is it published?

MR. FILLMORE: I have no more knowledge, my lord, than I can obtain from reading the paper itself. It is published in Saskatoon. I take it that it is published under the Saskatchewan statutes. It is published by the Publications Co-operative Association, Limited, at Saskatoon in the interests of the consumers co-operative movement. I find that it is printed by Modern Press, Limited, Saskatoon, Saskatchewan. We know that that is a reliable and responsible organization.

MR. PARKER: I do not know how every editorial comment may be quoted against any pool. It seems to me pretty far fetched, and to my mind it might very well be deleted from the brief.

MR. FILLMORE: It is a statement of general interest, as well as particular interest.

MR. PARKER: I am not quoting from newspapers from one end of the country to the other. However, if they think it is valuable, all right.

BY MR. PARKER:

Q. Then, at the bottom of page thirty-six we find this:

"Should there be a continuation of the unfair competition which they can provide because of their paying no taxes...."

And I take it you are referring to the pools; in your brief you are dealing only with the pools, you are not dealing with cooperatives generally. A. With the pools, primarily.

Q. And it continues:

"....the line elevator companies generally will ultimately have to sell out to them or reorganize in such manner as to avoid taxation."

Now, what do you say about that? In what way, if any, have the line companies -- if you are prepared to speak on behalf of the line companies; and I am at a loss to know whether I should ask questions about the line companies, or only about the association -- in what way has the association, and we will stop with that, suffered by reason of competition, up to date? A. The association has not suffered.

Q. Then, when you deal with competition, you are

purporting to be speaking on behalf of the individual companies, are you? A. Our member companies.

Q. Of your member companies. A. Yes.

Q. That is correct, is it? A. Except as to their individual business-- as to the group. We will speak of them as a group.

Q. Here is a sort of left-handed allegation, if I may so designate it, that somebody has suffered.

MR. FILLMORE: Now, just a minute; just read where it is stated that somebody has suffered in the past.

MR. PARKER: That is the question I am putting, as to whether they have or not.

BY MR. PARKER:

Q. Somebody is likely to suffer in the future; who is it who is liable to suffer in the future? A. The companies who are paying the taxes.

Q. Do you mean the line elevator companies? A. Yes, the line elevator companies which are paying taxes.

Q. And if this continues, this present exemption, these things which you state in your evidence will follow? I am asking if those same companies which are going to be hurt in the future, have been hurt up to date? A. Owing to the fact ---

Q. Would you please answer the question? Could you not answer it yes or no, and give an explanation afterwards? If it is not capable of that type of answer, give your explanation. A. Owing to the fact of the heavy volume of grain resting back in the country, the farmers are only too glad to deliver to any elevator, with the result that the companies have not been hurt, to date. But if there was plenty of space --when you arrive at a

place where there is ample space, and the farmers can deliver to the elevators of their choice, the elevator which is able to pay a higher price will automatically get the business. Through withholding moneys which might have been paid in taxes, they are able to improve their properties to the extent that others cannot compete. That is where you will suffer.

Q. What I want to get clear is this, that up to date the line companies have not been hurt? You know what I mean -- they have not suffered financially. A. I would say that to some extent they have.

Q. To what extent, and in what manner? A. Where they have space, and there is an elevator which, through failure to pay taxes, is able to pay a higher price for grain, then the farmer will deliver his grain to the elevator paying the higher price.

Q. Have you known of that to happen, in your own personal experience? A. I have heard of it, and Mr. Reid can tell you of actual cases.

Q. But you cannot? A. No -- but I have heard of it.

BY MR. ELLIOTT:

Q. What is meant by the expression "a continuation of the unfair competition"? A. The continuation of the failure of the department to collect taxes from the pools.

Q. The competition referred to is competition by the department? A. No, the department's failure to collect taxes from the pool elevator companies.

Q. Then, you call failure to collect taxes competition, do you? A. It enables the pools to create competition.

Q. But this continuation of the unfair competition I presume relates to some specific practices of the pools, does it? A. Through their ability to appropriate moneys for patronage dividends, rather than paying taxes.

Q. You are referring to the appropriations for patronage dividends, which have taken place in the past.

A. Yes, that is the only competition of which we complain. We have no other complaint in respect of competition.

BY MR. PARKER:

Q. When you refer to a continuation of something you pre-suppose that it already exists, or has existed in the past. Otherwise, it could not continue. A. That is correct.

BY THE CHAIRMAN:

Q. The word "unfair" has relation to taxation.

A. Yes, it is related to taxation.

BY MR. PARKER:

Q. You go on to say that if that continues the line elevator companies generally will ultimately have to sell out to them or reorganize; well, as I put it to one witness before, so what? Supposing they do have to reorganize, what harm is there in that? A. We do not mind being driven out of business through competition, but we do not like being driven out of business through unfair taxation, that is our complaint.

Q. Of course, that rather begs the question as to whether or not it is unfair taxation or unfair exemption. That is the whole debate, is it not?

MR. FILLMORE: Yes, that is the big question.

MR. PARKER: Yes, the \$64 question.

BY MR. ARNASON:

Q. What do you mean by the last part of that sentence, "or reorganize in such manner as to avoid taxation"; what type of reorganization did you have in mind?

A. There was an attempt made to present a letter to you in Vancouver, one written by Mr. Shane to a private corporation, which gives some indication of what might be done.

BY MR. PARKER:

Q. Is that the type of reorganization you had in mind? A. No, not necessarily that type.

Q. What kind did you have in mind; what kind of reorganization did you have in mind? A. In order to escape taxation you might reorganize as a cooperative.

Q. Well, would that be any great hardship for the country, or anybody else? I never have been able to understand--and I have asked it of more than one witness--why, if you escape taxation by reorganization, you would not do it.

MR. FILLMORE: There is the question of public interest to be considered.

MR. PARKER: Maybe the witness has an answer, and maybe he has not. Give him a chance to say so, if he has.

THE WITNESS: If we can have fair taxation we would just as soon be in business ourselves, and run our own affairs.

BY MR. ARNASON:

Q. Do you know of any cooperatives which, to your own knowledge, have been organized for the purpose of escaping income tax? A. I have read in the country press of retail stores being taken over -- sold by the

owners to cooperatives, and the question of taxation was referred to in the report of the meeting.

Q. That is the only referenc you have, is it?

MR. FILLMORE: There is evidence before the Commission respecting the number of elevators that have been bought, and the number of local associations organized in Manitoba. There is evidence of country elevators having been bought in Alberta.

MR. ELLIOTT: Is it alleged that those purchases were engineered in order to escape taxation?

MR. FILLMORE: We are not making the allegation; we are just pointing out the fact.

BY MR. PARKER:

Q. Then, we will turn to page thirty-seven, referring particularly to the first paragraph. I think some questions were asked with respect to this paragraph. In it you speak about cooperative growth and expansion, and about the middle of the paragraph you say:

"The latest report of the Dominion Bureau of Statistics reveals that the dollar volume of business transacted by cooperatives, whether real or so-called, increased from the huge figure of about \$250,000,000 in 1942 to over \$350,000,000 in 1943 -- about 40 per cent in one year."

Does the Bureau of Statistics make available any figures to show corresponding growth of non-cooperative business during the same period? A. If so, I have not seen them.

Q. Did you look for them in preparing this brief?

A. No, I do not think so.

Q. I suggest that the brief would be more to the point if it showed the two, side by side, namely how much

the cooperatives increased, as compared with the increase in private business, so-called. However, you did not get that information, or look for it. A. No, but I assume that the accountants for the Commission could obtain that information, if such figures are available.

Q. I daresay they could. But I was wondering why that part was picked out, and the corresponding figures were not used. A. I do not think there is any question but that the business of cooperatives is increasing. Once again, if you read the report of meetings of various cooperatives in various fields, you will see that they show substantial expansion.

Q. I do not think anyone doubts that. But one would have equally small doubts as to whether non-cooperative business has not increased just as fast in the last two or three years. A. My impression is that it is not increasing as rapidly; the expansion is not as great.

Q. Take the line operators' elevators; have they not increased in the last two years? A. No, there are fewer elevators.

Q. But, talking about the dollar volume of business -- A. We have fewer elevators, and the cooperatives have more than was the case a few years ago.

Q. I am talking about the dollar volume of business, because that is the comparison that is made in the brief. You do not refer to the number of elevators. Is not the volume of business -- or, we will put it this way: notwithstanding the taxes your companies, the line companies, have been paying during the war years, is it not true that their business turnover has gone greatly ahead, and that they have made substantial profits; is that not so? A. While our profits

have increased, our taxes have increased, and the amount left to us is probably no greater.

Q. Do you think that is a fair answer to the question? A. With respect to dollar volume, do you mean?

Q. I do not like to use the word "hedge", -- in fact, I do not know exactly what it means -- but do you not think you are hedging with me? A. I am not trying to hedge, but I think your question was a double barreled question, and one which required two answers.

Q. Then I shall separate it. A. You have still got two questions.

Q. Well, answer them both. A. Our dollar volume has increased, but it fluctuates from year to year.

Q. Does not the pool fluctuate, too? A. I would say so, yes. But that figure of \$50,000,000 stated for the pools this morning, might fluctuate from one year to another. You would always have fluctuation in the figures in elevator company statistics, both in volume and value of the grain.

Q. And while we are on that point, have you any knowledge or did you look for any evidence to show to what extent the line companies, notwithstanding the taxes they have paid, have been paying dividends on their share capital. A. We know what the public companies have been doing. Some of them have not paid dividends since 1929.

Q. The public elevators; let us restrict our discussion to the companies which you represent today, the line elevator companies

MR. FILLMORE: There are two classes of companies.

BY MR. PARKER:

Q. Deal with them both, then -- the eleven companies.

Is it true that, notwithstanding the taxes they have paid, they have also paid substantial dividends to their shareholders? A. I imagine if you were a shareholder of the Western Grain Company, for instance, you would not think so, because they have not had a dividend since 1929.

Q. That is a horrible example. Give us the other kind, now. A. Some of them are getting on the preferred shares a partial return, and some of them are getting full return on preferred shares. I do not know any that are getting any handsome return.

Q. How much are they getting during this period you have mentioned, namely 1942; how much are they getting, compared with what they were getting before? A. What do you mean by "before"?

Q. Before 1942. A. Some of them were getting dividends before 1942.

Q. And they are still getting them? A. Yes, still getting them. Some of them were not getting them before 1942, and are not getting them yet.

Q. Are there some who were getting them prior to 1942, and have since had to go without them, by reason of taxation? A. Some of them had to go without them because of taxation.

Q. You say they have? A. Yes.

Q. You say that by reason of taxation dividends have had to be passed? A. They had to go without dividends because of taxation, and because companies are not able to retain sufficient to pay those dividends.

Q. On page 41 of your brief -- this is a matter of argument perhaps -- you state in paragraph 13:

"Our system of income and excess profits taxation will collapse and a totally new system of taxation will have to be devised if competitors of the cooperatives become incapable of making a profit from business operations and are, as a result, driven out of business."

That may be so or it may not be so, I do not know, but assuming that it is so, what harm is there in that?

Supposing we do have to have a new system of taxation, is that any argument in your view as to why these cooperatives should be taxed if they are not otherwise taxable, simply to avoid reverting to a new system of taxation?

A. I do not think I would worry about what system of taxation there was as long as it was equitable and we all paid on the same basis. We are arguing against an income tax system being in effect by which a portion of business escapes, rightly or wrongly.

Q. I was just wondering what that was for. A. We are not arguing against a new system or we are not arguing for it.

Q. You are pointing out what will be the result if something is not done? A. Yes.

Q. I am suggesting that that may be a very good thing as far as the public interest is concerned.

MR. FILLMORE: Ask Mr. McDougall about that a little later on.

MR. PARKER: I will ask him when the time comes. I am like this gentleman, I think perhaps they might not agree.

BY THE CHAIRMAN:

Q. What do you mean by that, Mr. Lamont? If all private enterprise were driven out of business and the cooperatives

alone existed, the government would then have to devise another method? A. That is what it was in Russia.

Q. I thought that that is what was in your mind?

A. The taxes have to come from somewhere and if the cooperatives are the only ones in business, they will then have to pay taxes.

Q. A new scheme would have to be devised? A. Yes.

BY MR. ELLIOTT:

Q. You are almost saying that the taxes would have to come from business?

A. That has been the experience.

MR. FILLMORE: I suggest that Mr. Lamont does not want to get beyond his field or depth.

BY MR. PARKER:

Q. I have just one other question, Mr. Lamont. On pages 45 and 46 -- perhaps again this is a matter of argument,-- you are suggesting that taxation should be imposed on these cooperatives and that the amendment should provide that it be retroactive? A. Yes, sir.

Q. That is the effect of it? A. For any taxes which they owe.

Q. That they have owed during the past years?

A. That is the policy of the department now, in connection with private companies and there is no reason why they should not do it against cooperatives.

Q. Considering it from the standpoint of the public interest and the public welfare, what would happen to a business that had been doing business for the past number of years on the assumption that they were not taxable? What would happen to a business that had mapped out a programme and had a particular set-up? Do you think it would be in the public interest to impose taxation of the

type you suggest on those companies and make it retroactive? I think we can all well imagine what the result would be to those institutions? A. I am not suggesting imposing a tax; we are suggesting that the department enforce the law as it stands.

Q. But enforce it and go back over the past good many years? A. I know of one company with which I was personally connected where they went back to 1933. If they go back in the case of a private enterprise there is no reason why they should not go back with any other company.

Q. I can understand all that, but I am asking you what you consider would be the effect on the business structure of this country if that retroactive taxation was imposed? A. It is not retroactive taxation.

Q. I will withdraw that word if it is not suitable to you. Say if taxes are not collected which should have been collected the years before; if they are collected now with the penalties and interest as you suggest, do you think it would be in the public interest? A. I think it would be a great help to the present taxpayers.

Q. Particularly a great help to the line elevators? A. It would be a help to every taxpayer in Canada.

BY THE CHAIRMAN:

Q. What would happen to those who had not up until now paid taxes? What would happen to them if the tax situation reverted back to 1917? Can you form an opinion of what would happen to them? A. It might deplete their resources substantially.

Q. It might put them out of business altogether?

A. Well, I would think then that they should pay to the extent of their ability to pay.

THE CHAIRMAN: You are fencing, Mr. Lamont.

MR. PARKER: That is all I have to ask the witness.

BY MR. NADEAU:

Q. I understand that you recommend in your brief that the cooperatives should be taxed on their patronage dividends, mainly on the basis that they do not operate any more on an agency basis; is that right? A. We are urging the disallowance of patronage dividends as an expense because in our viewpoint what they call a patronage dividend is a portion of the earnings of the company. We have nothing against a patronage dividend being paid. We are quite prepared to have patronage dividends paid after taxation has been imposed on them.

Q. Supposing the pools go back to the system of agency contract as obtained previous to 1929, would you still recommend that they be taxed on their patronage dividends?

A. I do not see how they could possibly pay a patronage dividend when they were acting as an agency cooperative.

Q. That is why I am asking you the question. You state on page 27 of your brief:

"In any case, it is apparent that this section 4(p) applies only to cooperatives that operate on an 'agency' basis for their members." A. Yes.

Q. Perhaps I should put that question to your counsel instead of to you, but I should like to have your view as to what really constitutes an agency contract? A. An agency cooperative merely accepts goods for sale; it does not purchase goods. A pure agency cooperative in our view is one which merely accepts goods for sale and returns the proceeds of the sale less the selling expense. Under that system there cannot be a patronage dividend. They can make an initial payment, an interim payment if necessary and a final payment so that there is no patronage dividend involved.

There can be no patronage dividend involved.

Q. In those circumstances would you allow a deduction for reserve? A. No, sir.

Q. But what about the claim made by the Manitoba Pool that it is still acting as an agent or trustee for its members?

A. We do not agree with that.

Q. You do not agree with that? A. No.

Q. Did any of your members endeavour at any time to pay patronage dividends to their clients or shippers or customers?
A. Some of our member companies paid what they called business inducement payments.

MR. PARKER: That is a new one, I thought we had them all.

BY MR. NADEAU:

Q. Were those business inducement payments allowed as a deductible expense? A. The matter was referred to the Department of National Revenue and the companies were notified that they would be disallowed as an expense.

Q. No definite stand has been taken about that?

A. Oh yes, a definite stand has been taken; they have been disallowed.

Q. They were disallowed? A. They have been notified that they will be disallowed as an expense.

BY THE CHAIRMAN:

Q. Your companies regarded that as a business expense?
A. We regarded it as action which we had to take to meet the competition of the pool.

MR. PARKER: I think they thought it was worth trying anyway, Mr. Chairman.

BY MR. NADEAU:

Q. Then on page 38 you make a statement which appears to me to be a little strong. It worries me as a matter of fact and I should like to have your opinion on it. You state

at the top of page 38:

"As a result, our members are being required to support and maintain competitors whose policies are designed to eliminate such members from the grain trade". How do you know it is their policy to eliminate the private companies? A. From what they say about us on the radio and in their publications. I think if you lived in western Canada you would probably realize the significance of the remarks contained in that statement.

Q. I think this point is one of the main problems we have to solve, so I would like to know if you have any facts to support it? A. Well, we could file with your commission a number of statements made by the officials of these competitors.

MR. FILLMORE: We submit that there is some evidence on that point before the commission and we will refer to it. We propose to file written argument later on.

BY THE CHAIRMAN:

Q. Have you read the note on page 27 of Mr. McDougall's brief where he gives a citation from Mr. J. R. Love on cooperation? A. I have read it, but I do not recall it.

Q. Is that what you had in mind? A. No, it is more the direct statements made by the officials of our competing organizations.

MR. FILLMORE: And the action taken. The evidence of it is before the commission.

BY THE CHAIRMAN:

Q. I suppose in any event a prophet is never appreciated in his own country. You are not being prophetic there, are you? A. It is not that.

BY MR. ARNASON:

Q. I should like to know a little more about that

patronage dividend or the business inducement payment that some of your member companies attempted to make. Just under what conditions did they propose to make those payments? Were they at the end of the year, at the end of the current crop year or at the beginning of the following one?

A. They actually made the payments. There were different methods used by the different companies, but my understanding is that one company, as an example, at the beginning of the crop season paid their customers an amount equivalent to the deliveries of the past year provided they would sign an undertaking to deliver the current crop to them.

BY THE CHAIRMAN:

Q. Was that prior to the time the pools were under contract? A. This was just a year or two ago. It was designed to meet the patronage dividend payments being made by the pools, it was made in order to retain the customers. I believe in the neighbourhood of \$800,000 was paid out by the line elevator companies in that manner and it has all been disallowed as an expense. The companies have been notified to that effect.

BY MR. ELLIOTT:

Q. I presume that if the present tax situation should continue in respect to such payments and they were allowed as an expense, the line elevators would probably find it in their interest to make such payments in some years, at any rate, in competition with the cooperatives.

A. If they expected to remain in business they would have to meet the competition in some manner or other.

Q. They would consider that a necessary expense of competing with their competitors? They would consider they had to meet their competitors' practices? A. They thought that that was a necessary expense.

Q. That is what I meant. A. In meeting competition.

BY MR. VAUGHAN:

Q. You said a moment ago that if the pool elevator companies organized on the basis of agency there would not be any patronage dividends, there would not be any such thing as a patronage dividend in that event? A. No, I did not say that about the pool elevator; I was talking about agency cooperatives. I would think that the original wheat pool, operating as a wheat pool alone and disregarding the elevators, was an agency cooperative. It merely sold grain for its members and returned to them the proceeds of the sale, less selling expenses. They did not deduct any reserve.

Q. Supposing the method of operation went back to that. Do I understand that in that case there would be no patronage dividend; in the case of the agency there could be no patronage dividend? A. No. There is no purchase, there is merely a sale. I do not know how they could operate. They might be able to design some method of getting back there. I do not know, but they are not there now.

Q. There are always ways of reorganizing and getting on that basis. But I understood you to say that there would not be any patronage dividend if these organizations were on an agency basis, and yet your recommendation is that they should be taxed on the same basis as the association elevators. If they were on an entirely different basis, how could the taxation be the same? A. If they were on an agency basis there could not be any tax because there could not be any profit or gain. You have to complete the purchase and sale to arrive at a gain.

Q. You would say in that case that they would not be subject to tax? A. If they were on a pure agency basis.

BY THE CHAIRMAN:

Q. That would mean a reinstatement of the contracts?

A. I would not like to suggest that. I do not even know how they might do it. In the elevator business I do not see how it could be done. They were never on that basis in the elevators.

BY MR. VAUGHAN:

Q. Even if they did get back on that basis they would be competing with you just the same as they do now; the competition would be just the same, only it would be on an agency basis rather than on the present basis?

A. We would have to meet that contingency when it arose.

Q. You do not know how that could be done?

MR. FILLMORE: We are not complaining about competition as such, we only want a fair field.

BY MR. VAUGHAN:

Q. I could not reconcile this recommendation that taxation be on the same basis when the organization might be on a different basis, one organized as a stock company and the other as an agency? A. We are speaking of conditions as they exist now.

MR. VAUGHAN: I am thinking of what they might be.

MR. ELLIOTT: You take the general position that if there is a profit, it ought to be taxed, and if there is not a profit, it cannot be taxed?

BY MR. ARNASON:

Q. To continue a little further along this line. You state that under an agency contract there could be no profit. Supposing they were to carry on operations in this way: Supposing the member signed an application form under which the pool agreed to accept delivery of the grain, pay for it, take title to it, but there was in the contract a definite

stipulation to the effect that after the grain was sold everything arising out of the proceeds would be returned to the member, less designated expenses. What would be your view of a system like that? A. I think the Commissioner of Income Tax has the power to go behind the scenes to some extent to find out whether there is any tax-dodging in the operation.

MR. FILLMORE: It was held in the wheat pool case in 1930, as reported in the Supreme Court Reports, that the title to the grain and the proceeds passed to the purchaser and did not remain in the shipper.

MR. PORTER: That, of course, was for borrowing purposes only. That was due to a provision in the Bank Act and the case itself explains that. There was some question about the rights of the bank.

MR. FILLMORE: We do not want to argue that now. We will just agree to disagree.

MR. PORTER: It is not a matter of argument, it is just a matter of completing a partial statement.

THE CHAIRMAN: We will let that stand then. I think that is all, Mr. Lamont.

MR. PORTER: No, I have some questions to ask.

THE CHAIRMAN: I beg your pardon.

BY MR. PORTER:

Q. When did you become president of the Northwest Line Elevators Association? A. Last fall some time.

Q. Prior to that time what did you do?

A. I was vice-president of the Northwest Line Elevators Association.

Q. I will tell you what I am coming to. You were actually manager and president of another company prior to the time you became identified with the Northwest Line Elevators

Association? A. No. I was secretary of the Alberta Pacific Grain Company.

Q. But after that you were employed, I think, for a period constantly with a grain and milling company, something like that name?

A. I am now manager of the Grain and Milling Advertising Service Limited. A. That is what I am coming to., and that is the one which takes up the bulk of your time?

A. No.

Q. Is that the vehicle through which the members of the Northwest Line Elevators Association get out what they call their publicity?

A. No.

MR. FILLMORE: I do not think we are interested in Mr. Lamont's activities. We are only interested in the brief, not in his affairs.

THE CHAIRMAN: We have not heard of any publicity yet, Mr. Porter.

MR. PORTER: We heard just a moment ago about these counter-blasts. I just wanted to find out about Mr. Lamont's duties and interests and the interests of his organization.

BY MR. PORTER:

Q. As I understand it, for years you were actually in charge of publicity for the members of this organization across the west?

A. I am president of the organization.

Q. Have not you always been doing that publicity work? When did you quit doing it? I will put it that way?

A. It may not be publicity work, it may be educational,

Q. Call it educational, if you like.

MR. FILLMORE: Is the commission interested in whether we do publicity work or not, or whether Mr. Lamont does that? I do not think that we are.

THE CHAIRMAN: I do not see the relevancy, Mr. Porter.

MR. PORTER: I am making it relevant as I go along, but

I will not press it.

THE CHAIRMAN: If counsel will promise to make it relevant, I am quite ready to hear it.

MR. PORTER: I will not press it.

BY MR. PORTER:

Q. The Northwest Line Elevators Association was organized in 1899? A. Yes.

Q. Its function in those days and subsequently was to act as a sort of clearing house for the information and plans of members? A. As which?

Q. As a sort of clearing house for the information and plans of members? A. Yes, generally.

Q. It is the vehicle that you use for purposes such as the discussion of prices, spreads and the like? It is the vehicle that you use for the discussion of prices and competitive items of that kind as between members? A. I do not know that we have ever discussed prices. I do not recall ever being at a meeting where prices were discussed.

Q. As president of the Northwest Line Elevators Association you have been at a meeting of its members at which prices or spreads were discussed? A. There is a special committee which I believe deals with such matters as prices. I am not a member of the prices committee.

Q. But your organization has representatives on that committee? A. I think possibly the companies have representatives.

Q. Not your organization? Am I right in that? A. It is the companies who have the representatives on the committee.

Q. Then what does the Northwest Line Elevators Association do? A. Well, when a tax inquiry such as this

occurs we --

Q. I am coming to that. You are busy all the time, what do you do?

MR. FILLMORE: I really think this is out of order. After all, what has this to do with the inquiry or with the facts set out in our brief?

THE CHAIRMAN: We are still waiting to see the relevancy, Mr. Porter.

MR. PORTER: A group of people calling themselves the Northwest Line Elevators Association have come along here with allegations, facts, innuendoes and so on and I want to know who they are and what their job is. That is the relevancy of it.

THE WITNESS: We gave a list the other day, and I can read it again if you want to hear it, of some of the things we do.

THE CHAIRMAN: It does not matter very much what they do.

MR. PORTER: I quite appreciate that.

THE CHAIRMAN: We had another tax association in Winnipeg.

MR. PORTER: Oh, yes, and we will hear more of that one too. If this is a tax organization, all right.

THE WITNESS: It is not a tax organization. I did not say that it was. I said that there were many things that we do. Here is another list, if you would like a list of the things we do.

BY MR. PORTER:

Q. I will not press that and I will go on. We will come now to the tax question. For some years now your association has been interested in the tax question and

have been spending a good deal of time on it; is that right?

A. Yes, and we generally meet **you** people down here when we are discussing a tax situation.

Q. As a matter of fact your association want to the Minister of Finance and urged that these organizations be taxed, did it not?

MR. FILLMORE: Do not answer that.

THE CHAIRMAN: I do not think that is relevant.

MR. FILLMORE: Surely we are not doing things by indirection?

MR. PORTER: It may be that parliament is the place to deal with that.

THE CHAIRMAN: Giving my own opinion, I do not see where it is relevant. I think I will maintain that objection.

BY MR. PORTER:

Q. Now, Mr. Lamont, are you familiar with the negotiations that have been conducted annually since the Wheat Board began to function with respect to the handling agreement, or is that conducted by the member companies themselves?

A. It is conducted by a committee representing the member companies.

Q. Your association has nothing to do with that?

A. The committee represents the member companies. A special committee is appointed to conduct that.

Q. From your knowledge as president of the Northwest Line Association can you tell me whether those member companies have signed a handling agreement for 1943-44 with the Wheat Board? A. I cannot say; that is a matter that the individual companies would act on.

Q. I was asking you something different from that. From your own knowledge, do you know whether they have?

A. I do not know.

Q. Do you recall that they threatened injunction proceedings to prevent the board from proceeding at those price levels?

THE CHAIRMAN: Who is "they", Mr. Porter?

MR. PORTER: The members of my friend's association.

BY MR. PORTER:

Q. Have you any knowledge of that? A. For 1943-44?

Q. The 1943-44 handling agreement? A. Just repeat the question, please.

Q. Do you recall that they threatened injunction proceedings against the Board arising out of the negotiations for the 1943-44 handling agreements?

MR. FILLMORE: Mr. Chairman, I object to that. Supposing the answer is Yes? Then he will be asked why they asked for an injunction, or if they had just grounds for asking for an injunction. We will be trying another issue within this one.

THE CHAIRMAN: Unless this witness had anything to do with the request for the injunction, I do not see how he is qualified to answer the question. You may get another witness who may be able to answer it.

MR. PORTER: We have made the statement in our testimony that as a result of the competitive position of this farmer-owned organization there has been a progressive lowering of price to the benefit of the public and of the crown. I want to show by this questioning that that occurred in 1943-44 and was subsequently dealt with by order in council, to which I will refer you. Those negotiations were brought to an end under the War Measures Act. There was an attempt by the Line Elevator Companies to hold out for an increase and that was brought to an end by an order in

council. I can submit that order in council but this gentleman is put forward as the spokesman for eleven of the major companies.

THE CHAIRMAN: I do not think that that is relevant. Mr. Howard has said that the actual operators of the elevators are here and would go in the box.

MR. PORTER: He explained that two men are here, one who runs a western elevator company and another who runs a terminal elevator company. That is only one of the people who are supposed to be subscribing to this theory.

THE CHAIRMAN: If you want to prove that you can ask for a subpoena to bring them here, but as far as this witness is concerned I do not know that that is a fair question.

MR. PORTER: I do not know the number of the order in council, but I will give that to the registrar. I would offer that in support of the testimony which we have brought forward. I think this is relevant and I submit it should be considered by the commission in the public interest.

THE CHAIRMAN: You propose to get a copy of that order in council?

MR. PORTER: I can get one. There is no need to prove it.

THE CHAIRMAN: The order in council will prove itself.

MR. PORTER: It will prove itself. I will file that.

BY MR. PORTER:

Q. Now, do I understand that somewhere on this record will appear the names of the members of the Northwest Line Elevators Association? Do I understand that they have been filed? A. The names were filed along with the summary of the brief to be submitted.

Q. That is a matter of record now? A. They are there.

Q. The Alberta Pacific Grain Company is a member of

the association? A. Yes, sir.

Q. And at one time after its reconstruction in 1929 you were its secretary? A. I was from 1926.

Q. From 1926 to 1929? A. Until 1942.

Q. You went with it when it was bought out by Mr. Stewart and reconstructed?

MR. FILLMORE: I do not like to be interrupting continually but really I do not see what this has to do with the purposes and objects of this inquiry. There may be some indirect interest.

MR. PORTER: I will explain what I am coming to.

THE CHAIRMAN: Go ahead. I think it will be shorter if you go ahead.

MR. PORTER: I do not want to go ahead but it has been said --

THE CHAIRMAN: Everyone has been allowed very wide latitude and I do not intend to restrict anyone now.

BY MR. PORTER:

Q. You were secretary of that organization? A. Yes, sir.

Q. After its reconstruction in 1926? A. When it was sold to the public in 1926 I became the secretary.

Q. Mr. James Stewart, as I recall the transaction, bought that from the original shareholders and sold it to the new company created in 1926? A. I do not think that is quite correct. Mr. Stewart became the president.

Q. Perhaps you can tell us where we can get some of the material which would show us some of the details of that transaction and what actually happened to the capital position of the Alberta Pacific Grain Company on that re-organization? Can you tell me where any of those documents might be?

Mr. Lamont

MR. FILLMORE: I do not want to be obnoxious, but my friend may be asking a confidential secretary for information pertaining to his employer's business which has no bearing here.

MR. PORTER: I am not asking for their contents. Here is what I am coming at. We are told that some of these companies have never paid dividends. I want this commission to have a look into that because I think the reason they have not paid dividends is perfectly obvious. I am going to argue that the reason they did not pay dividends is that in the reconstruction that took place when they were sold out to the public a capital structure was set up which precluded the payment of dividends ever. I think it is perfectly relevant that the commission should get that information.

THE CHAIRMAN: What has that to do with the tax problem?

MR. PORTER: The allegation has been made that this competition and the taxes are putting these people out of business. This witness has just said that one grain company has never paid dividends, and I think there is a perfectly clear reason why they have not paid dividends.

MR. FILLMORE: We said that we are not complaining because we have suffered up to date.

MR. PORTER: That is not what your witness said.

BY MR. PORTER:

Q. Mr. Lamont, if the farmers of Western Canada or some groups of them were to decide among themselves that they wanted to take their grain from their farms to a terminal position at the head of the lakes at cost, would your association or its members have any objection?

A. We have no objection to a farmer doing anything, that is up to the stage when they enter into business.

However, if there is a profit made they should pay taxes on the profit and do what they like with the balance.

Q. Your objection is not to their doing it at cost, your objection is that as they are set up they are not doing it at cost? A. They are not doing it at cost.

Q. You would have no objection if they reconstructed their organization so as to do it at cost?

A. We have no objection to their doing anything that their hearts desire.

MR. PORTER: I do not think I have any more questions. I have some proposals which I should like to make at this stage. Having regard to the text of the reference of the commission which requires --

THE CHAIRMAN: Is this argument?

MR. PORTER: No, it is not argument.

MR. PARKER: Are not we going to get mixed up?

MR. PORTER: I am only asking the commission to inform itself about some of the facts. They may disagree with me entirely, but at this stage I want to place these before the commission. The relevancy arises from the fact that the commission is charged to examine the cooperatives, to examine the competitive position of those who compete with them and to make some recommendations in connection with the Income War Tax Act and the Excess Profits Tax Act, having regard to the public interest.

I say that it will be the duty of the commission to bring into balance the benefits that we urge are created. We urge that by reason of this competition it is in order to determine the cost and the onus that is being borne and the onus that must be borne by the Western Grower if the representations we have heard to-day are maintained to be

relevant matters.

Therefore, I ask the commission to inform itself and I do not think it will be difficult to do that. I ask the commission to inform itself of the following facts. I do not want any ruling on this at the moment, I am simply putting them on the record.

THE CHAIRMAN: You relieve me greatly.

MR. PORTER: First, the date of the construction of each country and terminal elevator now owned and operated by members of the Northwest Line Elevators Association. That information is available from the public records of the Board of Grain Commissioners.

Secondly, the rate of depreciation taken by present and antecedent owners over the life of those properties, so far as it is available. I was trying to get that from Mr. Lamont, but I think there are other ways of getting it.

Third, some measure of the capital structure of the original owners of these properties and the increment that occurred on their resale under the so-called reconstruction, and the extent to which those facilities were built up.

This information may not be available for all these companies, but certainly it is available for such of them as were sold, as we call it, to the public in 1926 and 1927 and 1928 and when they were reconstructed, many of them, in the manner of that time. As to the relevancy of this matter, I am prepared to argue this at another time..

BY MR. PORTER:

Q. By the way, do you know that the Alberta Pacific Grain Company recently bought out all the elevators that belonged to Bawlf? A. Yes, prior to the war.

Q. Prior to the war? Was that transaction prior to the war? A. It may have been 1939.

Q. Or 1940? A. Along in there, I am not sure of the exact year. It was some years ago now.

Q. It was after the operating of the excess profits taxation, was it not? A. I am not sure of the year.

Q. And it was after the payment of patronage dividends, was it not? A. It may have been in Manitoba, but I do not know about Saskatchewan and Alberta. I am not sure of the date.

Q. I think I can help you remember the date, because Mr. Milner came to Calgary two years ago and that was immediately after the transaction. I may be wrong in that?

A. No, that was not it.

Q. Do you know how many houses that involved?

A. No, not off-hand.

Q. You cannot even guess? A. My guess might be wrong.

Q. I am glad you are restraining yourself because you did not have that limitation this morning. Now, Mr. Lamont, you are not an elevator operator, I suppose? A. No, sir.

Q. You deal with other than the practical, physical operations? A. Yes.

Q. Have you ever, in connection with these reconstructions that you had something to do with, heard that a terminal and country elevator has to bear some relationship, one to the other, has to be in balance; that the volume of grain into the country elevator must bear some relationship to the ability to handle it in the terminal position? A. In my understanding it is preferable.

Q. If they get out of tune, the earning capacity of each is reduced? A. It would be affected.

Q. Oh, by the way, this is the very first question I should have asked you; I see I missed it. The directors of your association saw this brief? A. Yes, sir.

Q. Was it submitted to the boards of directors of each of your member companies? I am talking about the boards of directors of each of your member companies? A. I do not know about the boards of directors of the individual companies. That would be a matter between the representative on our board and his board. As to what he did, I do not know.

Q. So you are not aware whether the members of the boards of the companies on whose behalf you are now speaking approved this brief? A. We are not concerned; no.

MR. MILLIKEN: I should like to ask Mr. Lamont a few questions.

THE CHAIRMAN: What I would suggest is that if we are going on to finish this brief to-day, we might adjourn for a few minutes now. I would be quite willing, if the rest of my colleagues are, to finish the brief now.

MR. MILLIKEN: Am I the last person to speak to it? If I am, I can assure you I will finish to-day.

THE CHAIRMAN: I understand one or two more witnesses are coming.

MR. FILLMORE: I only have in mind calling Mr. Reid.

BY MR. MILLIKEN:

Q. I am not sure, Mr. Lamont, whether some of these questions I am going to ask you are of the slightest importance to the Commission, but they are in your brief. The first one to which I would draw your attention is in the middle of page 9. As I say, I do not know what it has to do with this Commission, but in view of the fact that these are pleadings I think we had better get them right. In the

third full paragraph from the top of the page, speaking of the pool elevators purchasing the Saskatchewan Co-operative Elevator Company, you say a value was determined of \$11,000,000 and the assumption of a mortgage in favour of the government of the province of Saskatchewan? A. That should be less the mortgage in favour of the government of the province of Saskatchewan. The \$11,000,000 was the entire purchase price.

Q. I do not know what value there is to be attached to this, but I noticed that counsel for the Commission questioned Mr. Wesson on the value of these elevators, and seemed to imply that there had been too much paid for them. Mr. Wesson said his company thought so, too --

MR. FILLMORE: No, we did not mean to --

MR. MILLIKEN: I am talking about counsel for the Commission, Mr. Fillmore. I may say that Mr. Justice Turgeon was the chairman of the arbitration board, and Mr. C.D. Howe was a member of the committee; and while we did think we paid too much for the elevators, if counsel was implying that there was some kind of frame-up, I can assure him there was nothing of the kind.

MR. PARKER: Counsel for the Commission has never implied anything, from Halifax to Vancouver.

MR. MILLIKEN: Counsel undertook to have Mr. Wesson practically admit that they were more or less the same people, and that it was by way of paying the money out of one pocket into the other.

THE CHAIRMAN: I do not think that bears on our problems.

MR. MILLIKEN: I quite agree, but the questions were asked.

BY MR. MILLIKEN:

Q. On the next page, Mr. Fillmore, there is something

else to which I wish to refer. Possibly this is something that is not so much a question I should ask you but it is something I want to draw to the attention of the Commission. In the third paragraph from the top of the page reference is made to an amendment to the Pool act which was obtained in 1930. It implies that this amendment provided for reserves being held with or without the payment of interest thereon. May I suggest to you, sir, that this authority was contained in the original memorandum of association; that it was continued in the incorporation of 1924, and that there was only a slight change in the wording of the section in 1930. The provision in connection with the payment or non-payment of interest upon these reserves was always in the wheat pool act of incorporation. I assume, Mr. Lamont, you will not disagree with me on that? A. Well, there were further statements made in the directors' reports, the annual reports, concerning the payment of interest, I believe.

Q. I can read you the act as it was in 1926-27, to show that it has that wording right in it.

MR. FILLMORE: If Mr. Milliken refers the Commission to a statute, I know it is accurate.

MR. MILLIKEN: Thank you.

BY MR. MILLIKEN:

Q. Then, Mr. Lamont, over on page 16 there is something in the first paragraph. I do not think you perhaps meant what these words imply to me. You say:

"Until 1931 the three pools confined their activities in the main to the conduct of contract pools and handled only the grain of their members."

As far as their elevator operations were concerned, they always handled the grain of non-members, did they not?

A. Yes, I think so. They were always public elevators.

MR. PORTER: Is that quite accurate?

THE WITNESS: In Alberta there is an exception to that, I believe, because in one year they were licensed as private elevators.

MR. PORTER: It was more than one year, but I cannot tell you how many years that was so, except at the point where we were the single house.

THE WITNESS: Those words, "and handled only the grain of their members" had reference only to the wheat pooling, not to the elevator companies.

BY MR. MILLIKEN:

Q. A little further down on the same page you say:

"Saskatchewan Pool -- paid in 1928 and 1929; credited in 1930 but payment made only in 1941."

Very likely you have known this, and it is quite easy to forget it. According to the evidence put in by Mr. Wesson, the Saskatchewan Pool paid interest on the elevator deductions under the first and second term contract until the end of 1930?

A. Yes.

Q. But under the second term contract they retained the interest until 1941; and I am suggesting to you that was the only money that was retained until 1941? A. The second series contract; that is my understanding.

Q. On the moneys taken in 1925, 1926 and 1927, interest was paid in full up to the end of 1930, and by the end of 1930? A. Yes.

Q. I am merely getting these statements correct; I do not think any of them are of very great importance, but I do not like them on the record if they are not correct. Now I refer to the next page, Mr. Lamont, the second paragraph,

where you commence by saying that in the 1929 act of Alberta it was decreed that the elevator reserves could be retained by the pool "so long as its directors are of opinion that it is useful in carrying on the business of the pool." You are referring there to the amendment to the Alberta act in 1929?

A. Yes.

Q. Which provided they could retain the deductions so long as the directors were of the opinion that it was useful. Then two paragraphs further down you say:

"By statutes enacted in 1929, 1930 and 1932 a similar state of affairs in respect of these reserves was created in Saskatchewan --"

Might I suggest to you that this is slightly misleading, because Saskatchewan always had in its act the right to retain the reserves as long as the directors might consider them useful. It was Alberta that got that provision inserted for the first time in 1929. Are you aware of that,

Mr. Lamont?

MR. FILLMORE: We will accept Mr. Milliken's statement.

MR. MILLIKEN: I want to refer to the section of the act, which the Commission has before it in the red covered book.

THE CHAIRMAN: I do not think much turns on that.

MR. MILLIKEN: I think these things are unimportant, but they are all set out in this brief, and they are in the form of pleadings, and I am afraid that if we do not correct them and they should go out in this way, they may be accepted as correct, because this morning some witness swore that to the best of his knowledge and belief all these statements were correct. I am sorry to be taking up your time in correcting what to me are insignificant and minor details.

MR. PORTER: I do not want to have to repeat this, but

I am taking the position that it is exactly what was said this morning; that is, that it is a pleading. I do not want to go into all these facts.

MR. FILLMORE: We are not parties to any proceeding.

MR. MILLIKEN: This was sworn to as correct.

MR. PORTER: Within the knowledge of a man who said he did not know.

BY MR. MILLIKEN:

Q. Then on page 21, in the second paragraph from the top, I read this:

"Patronage dividends. The pools have paid so-called 'patronage dividends' at various times since 1930."

You admit, of course, that as far as the Saskatchewan Pool is concerned, they paid them from the very commencement of operations in 1925, and in that case it was not since 1930?

A. I believe there is a statement in the back --

Q. I do not believe it goes back further than 1929, does it? I thought of that myself. A. No, it goes back to 1929-30. My recollection is that there were patronage dividends paid.

Q. Prior to 1930, by the Saskatchewan Pool Elevators?

A. Yes. These tax figures just go back to 1930, so we have used a similar period.

MR. MILLIKEN: I am not criticizing it.

MR. FILLMORE: By Saskatchewan Pool Elevators Limited.

THE WITNESS: Yes, the pool elevator company.

BY MR. MILLIKEN:

Q. A little further down the same page you say:

"Latterly, in Alberta and Saskatchewan, these payments have been denominated 'excess charges refunds.'"

I suggest to you that you or your solicitor evidently

have all of the directors' reports of the Saskatchewan Wheat Pool. If you will read the directors' report of 1928 you will find that the same expression was used then as is used now; that is, it was called an excess charges refund.

A. You also call them patronage dividends from time to time.

Q. Yes, but this implies a new practice which has grown up in the last few years, and I am suggesting we always called them by that name in Saskatchewan, and you can check that from our directors' reports.

Then on page 23, in the middle of the page, there is a paragraph I do not understand. It reads:

"The pools permit their 'members' from time to time, as distinguished from such shareholders as they may have had or now have, to control the election of their directors."

What do you mean by that? You are making a distinction, apparently, between members and shareholders. What is the distinction? A. Well, this is your new dollar people, as against your people who put up the money.

Q. But the people who put up the money are also one-dollar people. Voting in the wheat pool is all done by one-dollar people, and always was. At any rate, that is the distinction you were making, is it? A. Yes, that would be it.

Q. That is, you are saying that a one-dollar shareholder in the pool, who also had deductions invested in the pool -- you are calling him a shareholder, and you are calling the one-dollar shareholder who has not deductions -- A. Well, a man --

Q. Just a moment; listen to me. You are saying that a man who has a one-dollar share in the pool, which he has to have, and who also has some deductions in the pool is a

different type of shareholder than the man you call a member, who has merely a one-dollar share in the pool. Is that it? A. Well, a man might be what you would term a shareholder; he might have considerable money invested in your elevator and commercial reserves and really not be a member, having retired from farming.

Q. But he has to be a member or he could not have the deductions. A member or a shareholder in a wheat pool is someone who has a one-dollar share; and nobody has any of these deductions unless he has a one-dollar share. I do not know just what distinction you are making when you are talking about members electing directors, as distinguished from shareholders electing directors. A. Well, it is the people without any investment coming in and controlling the organization and taking everything in the form of patronage dividends, rather than giving anything to the shareholders.

Q. Rather than giving anything to the shareholders?

A. Yes.

Q. You know the wheat pool is forbidden to give its shareholders any dividends? A. They are doing it now.

Q. No, they are not. A. What are they giving?

Q. The only thing is patronage dividends. A. You are giving them 3 per cent.

Q. No, we are paying interest on the elevator deductions.

THE CHAIRMAN: Just establish the fact, Mr. Milliken. You can argue that later on, you know.

MR. MILLIKEN: I beg your pardon, sir. I should like to draw the attention of the Commission, because I do not think it is a matter for the witness --

THE WITNESS: It may be that on that point --

MR. MILLIKEN: I am on another matter now. I should like to draw the attention of the Commission to the paragraph at the bottom of page 23, which states that no member or shareholder as such has any title to any of the corporate property or assets of any subsidiaries, that all such assets and property are vested in the corporation concerned.

Mr. Wesson's evidence is that the elevator shares are held by the Saskatchewan Wheat Pool in trust for its members, and have always been said to be held in that way. The members have always been told that. Therefore I am just suggesting to the Commission that this statement is open to question. I am not asking the witness any questions about it, however.

Q. Turning to page 27, Mr. Lamont, at the bottom of the page -- no, I am sorry but I am afraid that is not the page. I will deal with it without mentioning the page. Am I to understand that you are of the opinion that if an elevator company had a contract with its members to deliver grain to it, under which it agreed that no matter how it handled that grain, whether it stored it, merely shipped it, merely put it through the house, or bought it and resold it, but it has a written contract to pay everything to the member at the end of the season other than the actual cost, that it could not do so without first paying income tax on that money? A. Well, if the company operates in such a manner under the act that it made a profit, then it would first have to pay whatever it should pay by way of tax before it paid out anything to the grower.

Q. Somewhere in your brief you say there is no obligation, expressed or implied -- and that is what I was trying to find -- on the part of the pools to refund the excess charge or the patronage dividend to their members. What I am

asking you is, if there was an obligation expressed -- we will forget about the "implied" for a moment -- if there was an obligation expressed, are you of the opinion that it would still be the income of the pools? A. Once again, I would want to see the obligation.

MR. FILLMORE: Of course, my Lord, that is a matter of argument also, I suggest.

THE CHAIRMAN: I am afraid, Mr. Milliken, you are arguing the case with this series of questions.

MR. MILLIKEN: I am very anxious to get this witness or some other witness to give an answer to that question, because I want to ask him something else. If I were sure there was going to be a grain witness called to the stand I would stop now, and ask this question of the grain witness.

THE CHAIRMAN: I would call your attention to the fact that up to now you have been advancing an argument. This really is not questioning the witness.

MR. MILLIKEN: I am very sorry, because I have something to ask some of these grain witnesses, something that I would like explained.

THE CHAIRMAN: I rather thought you would be holding your fire for the argument.

MR. MILLIKEN: Frankly it bothers me to know what are statements of fact in this brief and what are arguments. I thought when the statement was made in this brief that there was no obligation, **express** or implied, on the part of the pools, that was a statement of fact and not an argument.

MR. FILLMORE: We say that in the evidence before this Commission up to date, no such obligation has been discovered. But my learned friends may not agree. We will have to consider that later.

THE CHAIRMAN: That is a matter of argument.

MR. MILLIKEN: I am not asking whether one has been discovered. I am asking what he would consider an obligation.

THE CHAIRMAN: We have all the facts surrounding that situation, and it is merely a matter of argument. You may not agree with the witness.

MR. MILLIKEN: I do not necessarily disagree with the witness. I realize there is room for argument on that point, but I thought I was asking a question of fact. However, I will not press it. That is all, Mr. Lamont.

A. C. REID,

Director, North-West
Line Elevators Association,
having been duly sworn,
testified as follows:

BY MR. FILLMORE:

Q. You are Mr. Cumberland Reid? A. Yes, sir.

Q. And what is your occupation? A. I am a director of the association, and outside of that I am president of the Western Grain Company.

Q. Which is a member of the association? A. Yes, one of the member companies.

Q. How long have you been connected with the grain business? A. Well, I noticed that when the other witnesses came here they tried to establish a long connection with agriculture and the grain business, and to answer that I will make a brief statement.

MR. PARKER: Answer the question; we do not want a statement.

BY MR. FILLMORE:

Q. How many years have you been connected with the grain business? A. Practically all my life. My father operated

an elevator in a small town in Manitoba.

Q. In charge of an elevator? A. No, I have not been in charge of an elevator. I have worked in them.

Q. Have you been an elevator superintendent? A. I never had a responsible position in the business until I came back from the war in 1919.

Q. And what was your position then? A. I was general superintendent then.

Q. Of what? A. Of the Western Grain Company.

Q. At page 32 of our brief we state that it is obvious that the farmer will patronize the elevator at which he obtains the highest price or the lowest handling charge. In view of your experience, do you say that such is the case?

A. I think that is a very fair statement, borne out by what we find in everyday dealings with our customers.

Q. Then you state:

"Consequently, to remain in business, all line elevator companies and United Grain Growers Limited had to put reduced charges into effect, regardless of the fact that services rendered must be performed at a loss."

First of all, did all line elevator companies and the United Grain Growers Limited put the reduced charges into effect? A. Yes.

Q. And why did they put them into effect? A. Because they felt that competition would force them to do so. I am going to enlarge on that a little. This is a matter of opinion, but I think that with the congested conditions we had at a lot of points we could have quite well said, "Well, it is below cost and we are not going to meet it," and we would still have that business. But I think we would have built up ill-will with our customers for the future, and

therefore I think it was sound business to immediately meet that competition.

Q. Then you say that the services rendered must be performed at a loss. To what services do we refer? A. Well, of course in a general way we have two means of income or revenue in the elevator business; that is, from the handling charge and from storage.

Q. I should call your attention to the preceding paragraph, which refers to the reduction -- A. I was going on to say that this was the handling charge, and while our contract with the wheat board, as shown in the evidence, was 3 cents a bushel, this was slashed to 1 cent a bushel. Of course your income is the rate multiplied by the volume, and there is not any question that unless you have a tremendous volume, 1 cent a bushel will not begin to pay your operating expenses. I think the witnesses for the pools made that statement the other day.

Q. That is your view, that those services --

BY THE CHAIRMAN:

Q. That is the handling, as distinct from the storage?

A. Yes, the handling charge at 1 cent a bushel is definitely below the cost of performing that service.

BY MR. FILLMORE:

Q. That is your opinion, based upon your experience?

A. It is opinion, and it is a fact. I think any operator will verify that.

BY MR. ELLIOTT:

Q. Do any concerns engage in one of these operations and not in the other? A. Sometimes you involuntarily engage in only the handling of the grain, because it moves through your elevator so quickly. It may move out within the fifteen-

day free storage period, if there is no wheat being handled on a storage operation, and you never earn that storage. That is what happened to us in 1937 and 1938.

Q. So your statement is that if you did not get any handling of that grain --? A. If we did not get any storage.

Q. If you did not get any storage -- ? A. We would be badly in the red.

BY THE CHAIRMAN:

Q. That is, the 1 cent is not sufficient to take care of the handling unless storage is considered also? A. Unless you get some storage revenue also.

BY MR. FILLMORE:

Q. Now turning to page 36, at the bottom of that page, the brief states:

"Should there be a continuation of unfair competition, which they can provide because of their paying no taxes, the line elevator companies generally will ultimately have to sell out to them or reorganize in such manner as to avoid taxation."

Are you complaining that you have suffered materially up to date? A. No. I think circumstances have been a saving factor up to date. This contemplates what is going to happen when this backing-up of business is over.

Q. What do you mean by "unfair competition"? A. Well, I think that is as regards tax. We expect to operate with equal opportunity in the country, but they are carrying on exactly the same kind of business and so far have been escaping taxation. Do you want me to enlarge on that, as to why it hurts us?

Q. Just a moment. Then you say that if this unfair

competition continues the line elevator companies generally will have to sell out to them or reorganize in such a way as to avoid taxation. Why do we make that statement? How do you explain that allegation? A. I think if this situation continues, with the revenues of the pool elevators not being taxed, as a result of which they are able to pass out earnings to their patrons, while we, under the present taxation, have most of our earnings taken away, we will not be able to meet that competition and it is inevitable that in the long run we will lose out, unless we devise some way of organizing to avoid taxation.

MR. PARKER: I do not think I will ask the witness to enlarge on his statement.

MR. MILLIKEN: I do not think I have any questions.

BY MR. ELLIOTT:

Q. I understand that some line elevator companies made payments on a bushelage basis, with the object of securing business in competition with the pools which had been paying patronage dividends? A. That is correct.

Q. Would it be your opinion that such a procedure was a necessary expense to meet the pool competition? A. No, it would not. We did not make that patronage payment. Of course that is my opinion. The companies who made that payment thought it was necessary to protect their business. They were sorry afterward, when they got a letter telling them they would have to pay income tax on it.

BY THE CHAIRMAN:

Q. When it was not acceptable they gave it up?

A. Yes, they only did it one year.

BY MR. ELLIOTT:

Q. Do you consider the fact that the pools pay or

allocate patronage dividends, in addition to the ordinary market price, is detrimental to your company? A. Absolutely. Patronage dividends, in my opinion, is simply a name that has come to have common usage. You have to go behind that and find out what it is. It is simply a method of disbursing profits.

Q. In answer to a question by Mr. Fillmore --

BY MR. FILLMORE:

Q. With regard to the payment of patronage dividends, I suppose you only have personal knowledge of what your own company did? A. Yes. I say "we" did not pay patronage dividends, and I really have not knowledge of the mechanics, we will say, that were used by the various companies who did pay them. But I do know that they all told me they got letters pointing out that this was not allowable.

BY MR. ELLIOTT:

Q. Therefore you would limit the statements you have been making to me to the experience of your own company right through? A. Yes.

Q. You said that you considered it necessary to meet the reduction in charges made by the pools. You do not consider it equally necessary to meet their patronage dividend policy? A. That would have to be qualified, depending upon the conditions. I think we may as well be frank about it. We have been running through a very congested period, and we have been able to get business.

Q. I am speaking now of present conditions, of the conditions which prevailed at the time that reduction was made, and also of the conditions which prevailed when patronage dividends were being paid. I am only speaking of that period.

A. When customers have the right and the full privilege,

owing to plenty of available elevator space, to go where they like, there is not any doubt that they will go where they can get one-quarter cent more.

Q. And you consider a patronage dividend as being in some sense equivalent to a quarter-cent more? A. Several of the patronage dividends which were paid did amount to a quarter cent a bushel.

BY MR. NADEAU:

Q. Is it to your knowledge that some members of the pools may go and sell grain to your company? A. Oh, yes, we have a lot of them. There are very many of them. Of course, as I say, under present congested conditions you get an interchange of customers. But I think it is fair to say there are a lot of pool members who are not sold to the pool; they like to pass their business around, and we regularly get some of it. I think the pool officials know that, too.

BY MR. FILLMORE:

Q. It is suggested to me that some companies are still allocating or setting aside patronage dividends, with the view or in the hope that the situation may change. Do you know anything about that? A. I think some of them are doing so. Notably that was shown in the Grain Growers brief, which was put in yesterday.

Q. And there may be others, as far as you know?

A. There are some others in the trade, as far as I know, who are doing it. Yes.

BY MR. MILLIKEN:

Q. Did I understand you to say that you did not think under any circumstances a patronage dividend, or a refund of an excess charge, or a refund of any of these charges was anything else than a distribution of profits? A. That is my opinion. You are carrying on a business.

Q. Your elevator company is a member of the Winnipeg Grain and Produce Exchange Clearing Association? A. Yes.

Q. And you have some stock in that organization?

A. We have what is called a membership in it.

Q. It is an ordinary joint stock company, incorporated under the laws of Manitoba? A. I am sorry, but we have had a membership in it for many years and I do not know what it is. It is a voluntary organization put together for one purpose; for clearing trades.

Q. It may not be fair to ask you that question, because it is a long time since this company was incorporated. It was incorporated in 1901, under the Joint Stock Companies Act of the province of Manitoba, and I have here in my possession a copy of the charter which I had forwarded to me a few days ago from Winnipeg, and which I should like to file with the Commission. If Mr. Fillmore says it is not a correct copy, after he has had an opportunity of looking at it, I am quite prepared to have it corrected. This is the charter of the Winnipeg Grain and Produce Exchange Clearing Association.

MR. FILLMORE: I may be misinformed, but I understood the Commission had a statement of that kind.

MR. MILLIKEN: With reference to this association? This is not the grain exchange but the clearing house. If you have this, Mr. Chairman, I am sorry to be taking up your time. Have you a copy filed already?

THE CHAIRMAN: Yes.

MR. MILLIKEN: Then I am sorry to be taking up your time in this way.

BY MR. MILLIKEN:

Q. I should just like to ask you, Mr. Reid, if you know whether or not that organization pays all but 10 per cent

of its annual earnings in the nature of a refund, a reduction in fees charged, which I think is the expression used?

A. Quite frankly I know nothing about it, but I know what the association is organized for and how we use it. We put our clearings in there, to save all the members passing cheques between one another.

Q. And you have never noticed that you were getting a refund or reduction in fees charged from that company each year? A. I would say it is a very small amount. It amounts to a few dollars.

Q. Now, Mr. Cumberland Reid, when the Winnipeg futures market is running wide open in wheat, that organization does a big business. It is true that at the present time, when there is no futures trading in wheat or flax, it cannot be a very large amount, and it will not be as long as the wheat board is operating. But once the wheat board ceases to operate and the futures market opens, it will do a very large business, will it not? I am referring to the Winnipeg Grain and Produce Exchange Clearing Association. A. There used to be a very large volume of business cleared through it every day.

Q. I show you a copy of the balance sheet of this organization for 1943, and I have a similar one for 1944. I should like you to show me where there is any reference in this document to the fact that a refund of excess charges was paid. If so, was income tax paid on it? A. Mr. Chairman, I know nothing about this company. I have never been a director of it.

MR. MILLIKEN: I want to draw the attention of the Commission --

THE CHAIRMAN: The witness says he knows nothing about it.

MR. MILLIKEN: Apparently these are confidential documents, and I do not know whether or not you have the balance sheet filed with you. But I should like to draw your attention to the fact that this organization does not show in its balance sheet a patronage dividend at all.

THE CHAIRMAN: You cannot ask this witness that question. He is not an official of that company.

MR. MILLIKEN: Well, sir, his company, the same as my client, gets the patronage dividend, that is how I know about it. They get this statement, the same as my clients get it. It is strange that he knows nothing about it.

THE CHAIRMAN: You cannot ask him to examine and report upon a balance sheet of another company, with which he is not connected.

MR. MILLIKEN: He is a shareholder.

THE CHAIRMAN: Yes, but --

MR. MILLIKEN: He is also one of those who receive the patronage dividend.

THE WITNESS: I never heard any transaction called by that name in the clearing house association.

MR. MILLIKEN: No, they have a new name for it. It is a reduction in the fees charged. That is an expression I am thinking we might adopt. That is all, thank you.

MR. FILLMORE: That completes this part, I think.

THE CHAIRMAN: Well, Mr. Parker, what will we take up to-morrow?

MR. PARKER: To-morrow we will take up the exporters' brief, and Professor McDougall. Then I understand that on Thursday we will take Mr. Good. There is one thing I should like to bring up before we adjourn, however.

MR. MILLIKEN: My Lord, as far as I am concerned I do

not care whether the export brief or Mr. McDougall's brief is read. I am prepared to accept them as read, because I have looked through them both.

THE CHAIRMAN: I think that is up to Mr. Fillmore.

MR. PARKER: What I was going to bring up before we adjourn was this. The board will remember that Mr. Good, on behalf of the Co-operative Union, read his main brief at the Ottawa sittings in February. He filed a supplementary brief, and it has been intimated to us more than once that at some stage he proposes to submit some definite recommendations in reference to the tax matter. On Thursday Mr. Good will be here as a witness, and I think perhaps some indication should be given to him and his counsel at this stage whether the Commission expects that at the end of his examination, following the reading of his supplementary brief, he will be expected to then submit his final recommendations, or whether those recommendations will be permitted to be held back and submitted perhaps at a much delayed session, at the time of the argument. His counsel is here, and I think we might have the matter clarified so there will be no further argument about it.

THE CHAIRMAN: As I understand it, Mr. Good is still in the witness box. His examination is to be completed on his main brief. Then I understand that he has a supplementary brief that he wants to speak to, and in the third place I understood from Mr. Good to-day that he had a series of recommendations that he wanted to put in, at one time or another. I told Mr. Good that we must finalize the hearings very soon, and that really the recommendations would be a part of the argument which is to come. Was that not our discussion, Mr. Parker?

MR. PARKER: Yes.

MR. MILLIKEN: Would you mind clarifying that last remark?

MR. PARKER: I am not sure that we are on common ground there, whether it is intended to have the supplementary brief put in and have Mr. Good prepared to answer any questions which may be put to him, or whether that is part of the argument that will be received as such and submitted through Mr. Francis.

MR. MILLIKEN: Is that what you were just saying now? I am only asking for information.

THE CHAIRMAN: The trouble is that apparently Mr. Good is not prepared to make his recommendations at this time. That is the difficulty we are in.

MR. PARKER: If there is no objection, and he wants to submit his recommendations at the time of the argument, perhaps two months hence, I do not mind; only I want it settled, and I think the board should have it settled, so we would know and other counsel who may be interested in those recommendations would know whether they are to be heard and examined into on Thursday next, or whether they are to be heard at the time of the argument, and whether or not questions may be asked then.

MR. FILLMORE: I was expecting to stay over until Thursday for the purpose of asking a few questions on the brief which has been put in, or anything else which may be filed.

THE CHAIRMAN: Then what situation are we in? I understand, Mr. Francis, that you are going to argue the case on behalf of the Co-operative Union?

MR. FRANCIS: My Lord, I find myself in a position which is perhaps a little unusual. I did and do represent a large number of cooperatives before this Commission, but I did not appear on behalf of the Co-operative Union of Canada. Mr. Good was called to the stand by my learned friend Mr. Parker, and he was examined by Mr. Parker. I did not appear for the Union.

MR. PARKER: I will have to correct my learned friend. I did not call Mr. Good to the stand and did not ask him any questions. After he appeared and read his brief the record will show that he was expressly stood aside, so that I might ask him some questions when he next appeared.

MR. FRANCIS: I am sorry if I have not stated it properly. I want to make it clear that he was not produced as a witness by me in the ordinary way. The position is that a committee has been conferring in regard to a number of cooperatives, but I am not appearing, and I have no instructions to appear, on behalf of the Co-operative Union of Canada. It is a group of cooperatives in which I am interested and which I am representing. That is the position.

MR. PARKER: Then the position is that we will have to wait until Thursday and receive such material as Mr. Good may have. If at that time he suggests that he should have another crack at it, we will have to deal with the matter then.

THE CHAIRMAN: We do not know where we stand at the moment, and there is no one to explain the situation to us.

MR. PARKER: That is right.

THE CHAIRMAN: Then we will adjourn.

---The Commission adjourned to meet again on Wednesday, May 2, 1945, at 10 o'clock a.m.

Canada. Co-operatives, Roy. Comm. on

R.
VII.

ROYAL COMMISSION
ON
CO-OPERATIVES

1945

PROCEEDINGS
(OFFICIAL REPORT)

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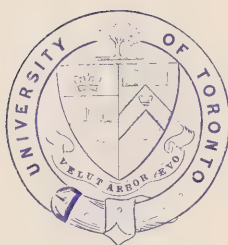


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ROYAL COMMISSION ON CO-OPERATIVES

Ottawa, Wednesday, May 2, 1945

VOLUME XXX

(Pages 7435 - 7588)

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ROYAL COMMISSION ON COOPERATIVES

The Commission appointed to inquire into the present position of cooperatives in the matter of income and excess profits tax, organization and business methods and operations, and the comparative position of persons engaged in business directly competitive therewith, met in Ottawa, on Wednesday, May 2, 1945.

PRESENT:

The Hon. Mr. Justice ERROL M. McDOUGALL, Chairman

B. N. ARNASON)	
G. A. ELLIOTT)	
J. M. NADEAU	)	Commissioners
J. J. VAUGHAN)	

Eugene T. Parker, K.C. Counsel

Major H. D. Woods) Associate
J. A. Chapdelaine) Registrars

Colonel G. W. Ross Executive
Secretary

APPEARANCES:

R. H. Milliken, K.C.	)	Saskatchewan Cooperative
	)	Producers Limited,
	)	(Saskatchewan Wheat Pool)
M. M. Porter, K.C.	)	Alberta Wheat Pool
Ben S. Plumer)	" " "
H. S. Scarth, K.C.	)	Manitoba Wheat Pool
W. J. Parker)	" " "
G. H. Steer, K.C.	)	United Grain Growers Limited
H. L. Griffin)	" " " "
J. E. Brownlee)	" " " "
Cecil Lamont	)	North West Line Elevators
W. P. Fillmore)	" " " "
W. B. Francis	)	Group of Cooperative Associations

Ottawa, Ontario,
Wednesday,
May 2, 1945

The Commission met at 10 a.m., His Honour Judge McDougall presiding.

MR. PARKER: This morning we have first the brief of the exporters, Mr. Fillmore being in charge of it. I will call on him.

MR. FILLMORE: I will ask Mr. Rupert Reece to present the brief.

RUPERT C. REECE,

Manager of K. B. Stoddart & Co. Ltd.,
called and duly sworn, testified as
follows:

BY MR. FILLMORE:

Q. What is your occupation, Mr. Reece? A. I am
manager of K. B. Stoddart & Company Limited.

Q. Is that company in the export business? A. Entirely
in the export business.

Q. Have you an association? A. Yes. We have an
association called the Shippers and Exporters Association,
but I am appearing here to-day submitting this brief and
acting as spokesman for a group of exporters similar to myself
who are members of that Shippers and Exporters Association.
In fact, this brief is subscribed by all the exporters in
that association with two exceptions, and I might say I have
a signed copy, signed by each individual exporter, authorizing
me to appear.

Q. Who are the two exceptions? A. One is the
Scottish Cooperative Wholesale Society, who are not interested
in joining in our brief, and the other is the Saskatchewan
Pool, Export Department, who are definitely not interested
in joining.

Q. So that with these exceptions you represent all of

those interested in the export of grain from Canada or from western Canada? A. I think I am safe in saying from Canada .

Q. Are those firms who have subscribed to the brief members of the North-West Line Elevators Association Limited?

A. Three of the companies included in this brief are elevator owners, members of the North-West line, but as an association we have nothing to do with the North-West line being an entirely separate organization.

Q. Who are the three? A. The Reliance Grain Company Limited, James Richardson & Sons Limited and McCabe Bros., Grain Company Limited.

Q. They also have country elevators? A. Yes, but we are an entirely separate organization.

Q. You may proceed now. A. The brief is as follows:

EXPORTERS' BRIEF

Preliminary:

"The Saskatchewan Pool Elevators Limited and the Saskatchewan Pool Terminals Limited, both subsidiary of the Saskatchewan Cooperative Producers Limited, are in the export and domestic field. For purposes of this brief we shall refer to these companies collectively as the 'Saskatchewan Pool'. They form part of one and the same general organization and are properly regarded as a unit.

"The Saskatchewan Pool pays no income or excess profits taxes, whereas we, who compete with it, are required to pay these taxes. We do not complain because we are called upon to bear our share of our country's war-time burdens, but we think it most unfair that our

government should discriminate against us in this regard. It is obvious that discrimination is involved when a competitor of any taxpayer is supplied, through freedom from taxation, with the means to grow more and more powerful, and better and better equipped to carry on business. Naturally, the higher the tax rates the greater the discrimination.

"You will observe that three of the ten companies which are joining in the submission of this brief are members of the North-West Line Elevators Association, which has already submitted a brief. The reason why these three association members support our submissions, as well as those made in the Association's Brief, is that they are engaged both in the business of exporting grain and in the business of operating grain elevators.

"The brief of the North-West Line Elevators Association discloses many facts about the Saskatchewan Pool which are pertinent to our representations. We are proceeding on the assumption that these facts need not here be re-stated and shall set forth herein only certain additional facts which relate specifically to our submission.

Operations in the Export Field of
The Saskatchewan Pool

"The Saskatchewan Pool has become one of the largest exporters of Canadian grain and its export business is rapidly expanding.

"In 1938-39, its total sales of grain in all positions, according to its 1938-39 financial statements, aggregated about 9,000,000 bushels. These sales increased to almost 16,000,000 bushels in the following year, 1939-40, and in 1943-44 amounted to over 56,000,000 bushels.

"Figures from year to year are as follows:

1938-39	9,000,000 bushels
1939-40	15,754,076
1940-41	28,649,574
1941-42	32,791,020
1942-43	37,477,923
1943-44	56,489,586

"These sales may be assumed to be mainly for export

"We do not attempt to estimate the profits derived by the Saskatchewan Pool from year to year from its export business. They must aggregate a substantial amount as, otherwise, the business would not have proved sufficiently attractive to stimulate the pool to expand it more than six-fold in six years.

General Nature of the Export Business

"It may be thought, since the bulk of Canadian grain must be disposed of in export markets, that the Saskatchewan Pool, by engaging in the export business, is merely carrying through their marketing operations in respect of grain acquired from its members. This is an erroneous assumption.

"The marketing of grain acquired at a country elevator is one transaction and any sale in the export markets is recognized as constituting the carrying on of a different kind of business.

"Apropos of this, it is significant that the Alberta Wheat Pool does not find it necessary or expedient to engage in export business. Neither does the Manitoba Wheat Pool. The United Grain Growers Limited does not engage in this business, and of all the other line elevator companies only three engage in the export trade. These last mentioned three handle their export business through departments whose operations are kept entirely separate from the business of operating grain elevators.

"The Pool's Profits from Export Trade

"We contend that the Saskatchewan Pool is carrying

on an export business with a view to profit. By so doing it engages in direct competition with concerns which have long made the handling of export sales their business, in most cases their only business. Members of the Pool benefit from the Pool's export business only through their participation in the profits which the pool makes out of it.

"The pool's operations in the export field do not result in any increase in aggregate export sales of Canadian grain nor in increased prices for such grain. Canadian grain is not sold abroad any more rapidly or at a better price as a result of the pool's invasion of this line of business. What the pool sells in export markets would have been sold in any event, and at similar prices, by or through the regular exporters.

"Accordingly, the pool's sales in export markets do no more than deprive the regular exporters of business which they would otherwise have handled with equal competence.

"There is no conceivable justification, either in law or equity, for any exemption from income and excess profits taxes of profits which the pool thus diverts to itself from taxpayers.

"Some Particulars Regarding the Export Business

"The business of exporting grain consists ordinarily of purchasing grain from stocks in terminal elevators in Canada, moving it to seaboard in order that it will be in the most favourable position for ready sale, and selling it in an overseas market. Sales to the United States have been spasmodic, although tending latterly, due to war conditions, to assume greater volume.

"An exporter who contemporaneously carries on a grain elevator business buys grain daily at country points

and would seem to be in a position to export the identical grain so bought. This is, however, not what occurs.

"The practice of grain elevator companies has been to hedge their daily purchases of grain by contemporaneous sales of futures contracts on the Winnipeg Grain Exchange and to operate this business independently of any export business they may do.

"Since September 27, 1943, all wheat and flax bought by elevator companies is acquired by them for account of the Wheat Board. The Board takes possession on arrival of the wheat or flax at terminal elevators.

"Wheat now required by exporters is obtained from the Wheat Board, and the business of the exporters has latterly become restricted to acting for and on behalf of the Wheat Board.

"Prior to these latest changes in the operations of exporters, the usual practice of all exporters, including the Saskatchewan Pool, was to purchase their requirements of grain for export from stocks in terminal elevators at the head of the lakes.

"Thus, an exporter would purchase grain of the various kinds and grades required from a number of terminal elevators and obtain warehouse receipts from these elevators covering such purchases. These warehouse receipts would evidence the right of the exporter to obtain from the elevators concerned respectively the specified quantities of grain.

"Having thus accumulated grain, the exporter would charter the necessary lake vessel tonnage for its movement to seaboard.

"To cause a vessel to move around from elevator to elevator in the harbors of Port Arthur and Fort William, loading from them respectively the grain represented

by the exporter's warehouse receipts, would involve unnecessary expense and a waste of time and effort. So, the practice has been for an exporter to hand over his warehouse receipts to an association, known as the Lake Shippers' Clearance Association. All exporters, shippers, ship owners and elevator owners, including the Saskatchewan pool, are members of this Association.

"On receiving warehouse receipts from an exporter it is the duty of the Association to locate in a minimum number of elevators (if possible in one only) the quantities of grain of the various kinds and grades represented by such receipts and to cause the exporter's vessel to be supplied at this minimum number of elevators with the grain which the exporter proposes to ship.

"The Association handles the making of the necessary adjustments as between elevators resulting from the delivery by one of grain represented, in whole or in part, by a warehouse receipt issued by another.

"Although exporters usually held title at all times to substantial quantities of grain in order to qualify them to offer it for immediate sale in export markets, and although their practice was to keep moving this grain nearer and nearer to the seaboard port of shipment and, in the winter months, to maintain substantial quantities in storage at seaboard, they invariably hedged this grain by selling futures contracts on the Winnipeg Grain Exchange.

"The prices at which grain was offered from time to time in export markets were based on the current prices of the exporter's futures contracts as, in case of a sale, the exporter concerned would be obliged to buy in the

appropriate futures contracts.

"A variation sometimes occurred in cases where the foreign buyer wished to purchase grain for shipment a considerable time ahead. In such a case the exporter, instead of purchasing spot grain might elect to purchase futures contracts equivalent to the amount of the export sale. Then, when the time for shipment arrived, the exporter could dispose of his futures contracts contemporaneously with the making of the necessary purchases of grain in a spot position or take delivery on his futures contracts.

"In carrying on their pre-war business of exporting grain, exporters necessarily have had to be in a position to offer grain for sale all over the world and have had to bear in mind at all times a multiplicity of factors affecting prices, such as lake and ocean freight rates, foreign exchange rates, railway rates, and so forth. Despite the protection against certain elements of loss which purchases and sales of futures contracts could provide, serious risks still remained against which only experience and alertness could afford reasonable protection.

"Upon the outbreak of hostilities in September, 1939, important changes occurred in methods of handling Canadian grain for export. The Canadian Wheat Board established floor prices, and, since it held at all times considerable stocks of wheat and wheat futures contracts, and since there were periods when its holdings of these tended to increase, the Wheat Board became the principal seller of wheat.

"Exporters thus came to rely primarily on the Wheat Board for their wheat and wheat futures contracts.

"Although, initially, the authorities in the United Kingdom found it advisable to use in the ordinary way the services of the established grain exporters, the Import Cereals Division of the United Kingdom gradually developed the practice of purchasing large blocks of wheat futures contracts direct from the Wheat Board. This resulted from the fact that the United Kingdom felt it necessary to determine in advance the extent of its purchase commitments, having special regard to their foreign exchange problems, and that the Wheat Board held the dominating position in the supply of wheat for export.

"This state of affairs having developed, subsequent purchases of spot grain from exporters by the Import Cereals Division involved dealing with the Wheat Board owing to the necessity of retiring futures contracts for a like quantity of grain previously acquired by that division from the Wheat Board.

"On September 27, 1943, the export situation changed completely. The Canadian Government directed the Canadian Wheat Board to take over all wheat and wheat futures contracts in the dominion, and all exporters have since become simply the agents of the Wheat Board.

"At about this time the export of grain to the United States became a more important factor in the trade. The Commodity Credit Corporation of the United States was the purchaser; but sales to this government organization were largely controlled by the Wheat Board, and, in effect, the exporters have functioned in respect of this business as agents of the board, who since September 27, 1943, have been the only source of wheat supplies for all the export market.

"There has been during the course of the war a limited

export business to places such as Eire, Spain, Portugal, Switzerland, Mexico, and so forth, but the volume is comparatively small.

"The procedure from time to time in respect of shipments of grain for export from the Pacific Coast has been substantially similar to that outlined above.

Recapitulation

"The foregoing recapitulation of the nature of the business of exporting grain is designed in part to emphasize the fact that the Saskatchewan Pool cannot justify a contention that grain which it has sold in export markets is the grain which it acquired from its members at its numerous grain elevators throughout Saskatchewan.

"Grain blught from its members by the pool was, prior to September 27, 1943, hedged by the sale of appropriate futures contracts on the Winnipeg Grain Exchange, and the grain itself was moved to terminal elevators as cars were available and circumstances permitted. This grain might or might not, depending on circumstances, be delivered into terminal elevators controlled by the Saskatchewan pool. Diversions at the terminals were frequent, as grain arriving at Lakehead must necessarily be placed with other grain of the same grade and in an elevator where there is space to receive it.

"In any case, the Saskatchewan Pool acquires grain at its country elevators from members and non-members alike, and no effort is made to segregate members' grain. So, even at that early stage in the marketing process, the identity of a large amount of members' grain is lost.

"Even if, however, grain which was identifiable as having been bought from members arrived at the terminals, the chances of its identity being preserved are remote. If accepted by elevators belonging to the Pool at the terminal, such grain would likely then lose its identity by being mixed with non-members' grain arriving there before, after or at the same time as members' grain. If such grain were diverted to another terminal elevator, its identity would be lost.

"In any case, as a matter of common practice the Saskatchewan Pool, like other exporters, has accumulated for export grain of the various grades and kinds required and then proceeded to move it to seaboard. This grain was bought by the pool, in part at least, from other elevator companies or delivery was taken by them on futures contracts. As an incident of shipment from the Lakehead the Pool has used the facilities of the Lake Shippers' Clearance Association, with the result that the grain actually loaded in the cargo space procured by the Pool would not to any substantial extent be identifiable with the grain actually purchased or otherwise acquired by the Pool for export.

"Moreover, even this grain would not likely be the grain actually delivered by the pool to an export purchaser, as grain arriving at seaboard is continuously being received by elevators and all grain of similar grade is binned together. Thereafter, deliveries are made by such elevators on the basis of quantity without regard to origin.

"In short, the Saskatchewan Pool's export sales were simply sales of grain acquired by it through the ordinary channels and in no way identifiable with grain previously acquired by the Pool from its members.

Submissions and Conclusion

"Although we have taken pains to indicate that the operations of the Saskatchewan Pool in the export markets are not a necessary part of the marketing functions which it was organized to perform for its members, we do not mean to suggest that this is a basic factor for purposes of our submissions.

"Nor do we intend to convey the impression that, in our opinion, this pool markets the grain of its members or otherwise qualifies for tax exemption under section 4(p) or under any other provisions of the Income War Tax Act. According to our understanding, this Pool has, since 1930, simply bought grain at its country elevators from members and non-members and then sold it at such profit as it could make. As already stated, this has, of course, not been the case since September 27, 1943, from which date the pool has functioned simply as agent for the Wheat Board.

"We do make the point however, that if the Saskatchewan pool had been the marketing agent for its members-- which we do not admit but deny-- its export business had nothing to do with the discharge of its duties as a marketing agent.

"The fundamental promise for our submissions is that this pool is carrying on this export business for the purpose of deriving additional profit or gain, that it has been and is making a profit or gain from such business, and that it has not been and is not now paying any income or excess profits taxes; whereas, we are paying income and excess profits taxes in respect of the profits or gains we contrive to make in carrying on precisely the same kind of business in direct competition with this Pool.

"From this, we arrive at the unanswerable contention that this is an unfair and inequitable state of affairs, that by taxing us and not collecting taxes from the Saskatchewan Pool the Federal Government has discriminated against us, and is now discriminating against us. Moreover, we contend that the Federal government is sustaining an increasing annual loss through failure to collect taxes from the Saskatchewan Pool, because our taxable profits or gains are lessened or reduced to the extent that the operations of the Pool expand. By virtue of its ability to make profits from this export business without being required to pay taxes upon them, the financial strength of the Saskatchewan Pool is necessarily being rapidly developed. As this develops, the Pool's competitive power is increased. Naturally, any very serious competitive struggle which may eventuate between us and the Saskatchewan Pool will in the end be determined by our relative ability to survive, and such ability to survive will depend on relative financial strength.

"Under present tax rates we can count on nothing better than the mere maintenance of our financial position. The pool, on the other hand, is able to accumulate as reserves what it should, and we do, pay in taxes.

"This pool cut its country elevator charges last fall to a level where, we are reliably informed they do not cover the cost of the services rendered, What is to prevent the pool from adopting similar tactics in the export field, thereby imposing a financial strain upon us which, due to the wartime taxes which we have carried, we are ill-equipped to sustain?

"If the pool followed such tactics they would not only avoid taxation themselves but would through this unfair competition put us in the position where we would be unable to pay taxes.

"For these reasons we submit that the Saskatchewan Pool should be required to pay income and excess profits taxes in respect of all income and profits which it has derived from its export business, and that it should pay such taxes from now on, the whole on a basis and on terms and conditions exactly the same (both as to determination of the amounts of its income and profits in the various years in which it has operated in the export field and as to the calculation of the taxes payable for such years respectively in respect of such income and profits) as have applied to our operations and taxes in respect of the same years respectively.

"The whole respectfully submitted.

Bunge Corporation Limited
Cargill Grain Company Limited
Continental Grain Co. (Canada) Limited
Hallet and Carey Limited
Leval & Co. Inc.
McCabe Bros. Grain Co. Limited
Norris Grain Company Limited
Reliance Grain Company Limited
James Richardson & Sons Limited
K. B. Stoddart & Co. Limited

Winnipeg, Manitoba,
March 31, 1945."

BY MR. PARKER

Q. Mr. Reece, on page 2 of your brief you say:

"The Saskatchewan Pool has become one of the largest exporters of Canadian grain, and its export business is rapidly expanding."

Then you follow with some figures. What is the source of those figures; where did you get them? A. From their own published statements.

MR. FILLMORE: From their annual reports, as I understand it, which we had.

BY MR. PARKER:

Q. Do the annual reports state that these are the number of bushels they exported? A. They show them under their heading of export business.

Q. I do not get the significance of your last sentence, at the bottom of the page. After giving the figures dealing with sales, you then wind up by saying:

"These sales may be deemed to be mainly for export." Why do you deem they are not all for domestic use, just as readily as you deem they are for export? A. Because these figures are published under their export department.

Q. In such a way that they say these are the number of bushels they exported?

MR. FILLMORE: That would appear clear from the published reports. They are under the heading of the export department.

MR. PARKER: That is what the witness says.

MR. MILLIKEN: If it is of any interest to the Commission I will undertake to give you the figures showing how much of this grain was for shipment outside of North America; that is, for what I assume Mr. Reece is calling export. My advice is that it is about half of the total shown in these figures,

but I can get that for you and file it with the Commission for each of these years.

BY MR. PARKER:

Q. That is just what I was afraid of, that having given us figures under the heading of sales, you have been making the assumption that it was all for export. I want to know whether that is true. Do you include for export grain shipped to the United States? Do you include that in the quantities exported? A. Yes, I think so. It is exported out of Canada.

Q. That is what you have in mind here? Did you break down these figures to show what proportion of this amount which you have set out here was sent to the United States, and how much was sent across the water? A. No, I have not.

Q. Or how much of it was for domestic use, if any? A. No, but Mr. Milliken can show that.

Q. I know Mr. Milliken can do that, but you come in here with a brief and you give the Commission certain figures. I want to make sure they are reliable. A. The totals are reliable, all right.

Q. I am not questioning that, but you cannot break them down? A. No, I cannot.

Q. You cannot tell me how much went to the United States, how much was for domestic use and how much was for what we will call foreign export other than the United States? You cannot do that? A. What do you mean by "foreign export"?

Q. I said foreign export, to places other than the United States. A. Oh, you mean across the sea.

Q. You have not that breakdown? A. No, I have not.

Q. Then I turn to page 3:

"General nature of the export business: It may be

thought, since the bulk of Canadian grain must be disposed of in export markets, that the Saskatchewan Pool, by engaging in the export business, is merely carrying through their marketing operations in respect of grain acquired from its members."

But you say that is an erroneous assumption, and I presume you go on to explain why that is erroneous, because of the way the grain is mixed. Is that it? A. Because of the way the grain is mixed?

Q. Yes, that grain acquired by the Saskatchewan Pool from its members is so intermingled with other grain that they cannot say they are just exporting the grain of their members. That is the burden of your argument, is it not?

A. Yes. Of course they have said that themselves.

Q. What I suggest to you is that whether they export the exact, identical grain which they received from their members or whether they export an equivalent amount, or thereabouts, of the mixed grain, is it not of just as great assistance to their members as though they exported the actual, specific grain? A. The point we make there in that observation is that in their export sales there has been included a certain amount of grain which did not come from their own members. A profit is made on that grain, and is not returned actually to the member who produced the grain.

Q. But there is a return to the man who produced an equivalent amount of grain? A. Yes.

MR. FILLMORE: I do not understand that question. Do not answer it too quickly.

MR. PARKER: Who is answering the question, the witness or my learned friend?

MR. FILLMORE: I do not want him to answer any questions I cannot understand.

MR. PARKER: Maybe he can understand them and you cannot. The witness understands the grain trade, I think.

MR. FILLMORE: I should like to be able to follow the questions and answers.

BY MR. PARKER:

Q. Have I put to you any question that you have not understood, Mr. Reece? A. I have understood them reasonably well.

Q. Is there any doubt in your mind at all as to the meaning? If there is, I want to clear up that doubt. A. You have been very fair, but I sometimes think a person engaged in the trade puts a question to a grain man in a way that he can better understand it.

Q. I do not want to put any question to you in such a way that you cannot understand it. A. It is all right so far.

Q. And I do not want you to answer a question you do not understand. If you do not understand it, please stop me. I say, does it make any particular difference whether the Saskatchewan Pool exports, we will say, 50,000,000 bushels of what we will call mixed grain --? A. You mean by "mixed grain" the grain of members and of non-members?

Q. Yes, after it has been put together; or whether they export the exact, identical grain which they purchased from their members, as long as the quantity is equivalent? Is it not just as helpful to the members as though they exported their actual grain? Do you understand the question? A. Yes, I think I understand the question, but our only thought in that matter was that we did not know what the

Saskatchewan Pool might say in their own brief. The only thing was to point out that they could not presume to say that the grain they sold for export came from their members entirely.

Q. What is the good of setting up a straw man and knocking him down? Has anybody ever suggested that they did? A. No, but this brief was written before we ever saw a copy of their brief, and we just wanted to be sure that they did not say that.

Q. Well, I am afraid that is what happened before. We have had a number of straw men set up here, I think. A. I do not understand that remark.

Q. You do not understand that? A. No.

Q. Then I will not ask you to answer it. I go on to your next paragraph:

"The marketing of grain acquired at a country elevator is one transaction, and any sale in the export markets is recognized as constituting the carrying on of a different kind of business."

Recognized by whom? A. Oh, recognized by the trade in general.

Q. What do you mean by the "trade in general"? Is that just the exporters? A. No, the grain trade in general.

Q. How extensive is that? I do not understand your answer; I am like you, now. I do not understand what you mean by the grain trade in general. Does it include millers? A. Yes.

Q. Exporters? A. Yes.

Q. Anybody else? Growers? A. Yes, growers.

Q. Elevator operators? A. Yes. It includes all those engaged in various phases of the grain trade.

Q. Well, I dare say there is a difference, in connection with the marketing of grain at a country elevator; but really a country elevator in one sense is not a market for the grain at all. It has to get beyond that before you get to a market, in a real sense. Is that not so?

MR. FILLMORE: I do not wish to interfere, but I submit that where grain is brought to the elevator and is sold for cash, and paid for, that is marketing the grain.

BY MR. PARKER:

Q. Well, perhaps that is so. But is it marketing grain when the grower simply brings it to the elevator and delivers it on consignment, with the request that the elevator operator market it for him? Is that what you understand by marketing, Mr. Reece? A. Some grain, I presume -- I know very little about the country operations, I may say; my entire experience is in the export field, but some grain is marketed at the country elevator and some at the terminal. I do not know; I may be wrong.

Q. I do not think we need pursue it. I want to look at the last sentence in that paragraph:

"These last mentioned three handle their export business through departments whose operations are kept entirely separate from the business of operating grain elevators."

Does it make any difference whether they are operated by separate departments or whether the business is carried on by separately incorporated companies? Does it change the nature of the exporting business, in your judgment? I do not quite get the significance of that last statement.

A. Except that there are three companies, we have explained who have joined in this brief, who are in both ends of the business, but their export business is entirely separate from

their elevator business, and they carry their export business the same as the rest of us do.

Q. They keep them in separate compartments and recognize them in every respect as two separate businesses?

A. Yes.

Q. The pools do not do that; is that your suggestion?

A. They have their separate departments.

Q. But they carry on as one general business?

MR. FILLMORE: You say "they", but there is only one pool in the export business.

THE CHAIRMAN: Yes, only the Saskatchewan Pool.

MR. PARKER: Yes, I mean the Saskatchewan Pool.

Q. They treat their business more as a unit? A. Their export department is a department of the whole picture.

Q. I say it is merely a part of one general business, is it not? A. Yes, I suppose so.

Q. Now I go on to the next point:

"We contend that the Saskatchewan Pool is carrying on an export business with a view to profit."

As I understood their submission, their argument, that is exactly what they are not doing. They are carrying on a part of their general operations, in order that their members may in the final analysis get a little more for their grain. Is that contention of theirs, as I put it to you, not correct? A. I do not know what their intention is, but they are quite definitely in the export business.

Q. I do not think they dispute that they are in the export business; they admit that; but whether they are in it with a view to profit, as you state, is quite a different thing. As I understand their submission, they are exporting grain as a part of their general business in order that they

may have greater benefits resulting to their members. Do you agree with that? A. I find it very hard to agree that they do not want to get a profit through their export business. They are not carrying it on just for experience, or anything like that.

Q. Perhaps you did not follow me? A. I think you meant just as part of their whole operation?

Q. Yes; in order, as I say, that resulting benefits may come back to their members, even though in the process they do export not merely the specific wheat from their members but a part of this general wheat you have described. I do not say they are right and I do not say that you are wrong, but I want you to point out, if you can, wherein their contention is wrong. However, if you do not care to go any further than that --? A. I think they are in the export business the same as the rest of us, and they make a profit, and so do we try to.

Q. That is all you have to say about it? A. Yes.

Q. All right. Now, at the top of page 4 I read this:

"The pool's operations in the export field do not result in any increase in aggregate export sales of Canadian grain nor in increased prices for such grain --"

and so on. Assuming that what you say there is all perfectly true, how do you relate that to this question of taxation? You do not suggest that because of the situation, as you detail it there, that therefore this should be stopped in some way by the imposition of taxes, do you? Is that what you are suggesting? A. No. I think what we are suggesting there is the fact that the pools pay no taxes, and the fact that they are in the export field does nothing to increase the sale of Canada's grain for export, either the quantity

or the price. That business could just as well be done by the rest of us, who do pay taxes.

Q. And is not the converse equally true, that it might very well all be done by the pools, and you get out of the field altogether? You do not increase the amount of grain for export either, do you? A. It may come to that.

Q. Your companies do not increase the quantity of grain for export either, do they? A. The thing is this --

Q. Do you? Just answer that, first? A. I should like to answer it in this way, that if the pools were not in the export business, we would sell just as much grain. We would all do more business.

Q. Perhaps a little more? A. Yes, probably.

Q. And I suggest to you that the converse is equally true; that if you were not in the export business the pools might sell a little more? A. If we were not in the export business the pools certainly would sell more.

Q. Then why do you not get out, instead of suggesting that they should get out? A. We felt that we were in the position to-day where the government is anxious to get all the income it can. It is not going to be much fun if you have this vast export industry of Canada in the hands of one man; and I can develop that a step further, if you like.

Q. Go ahead; develop it as far as you wish. A. I think I am absolutely justified in saying that those of us who have been in the export trade for a number of years -- my own company about forty-one years -- have been rendering a definite service to Canada. We have run our business in a competent way. We have trained staffs. We have connections on the other side. We offer our wheat to different countries of the world; and if that valuable machinery is withdrawn due to pool

competition, it would result in Canada just having one firm or one monopoly in the selling of our wheat for export, and I do feel -- this is the opinion of our group I am expressing now -- that this would be definitely not in the best interests of Canada, for the simple reason that one firm, one all-powerful monopoly in charge of the export of Canadian grain, might cause a number of things to happen. For instance, we are competing all along with other grains, Australian and Argentine grains -- that is, under normal conditions -- and it might so happen that if there were only one organization it might become stubborn and say the wheat was worth more money, and might completely miss the market. I think it would be very dangerous, and we do feel that we are justified in saying we are rendering some service.

Q. I dare say that is very true, Mr. Reece.

BY THE CHAIRMAN:

Q. I take it from what you say, Mr. Reece, that the export branch of the grain trade is not a necessary element of the enterprise? A. Of what, sir?

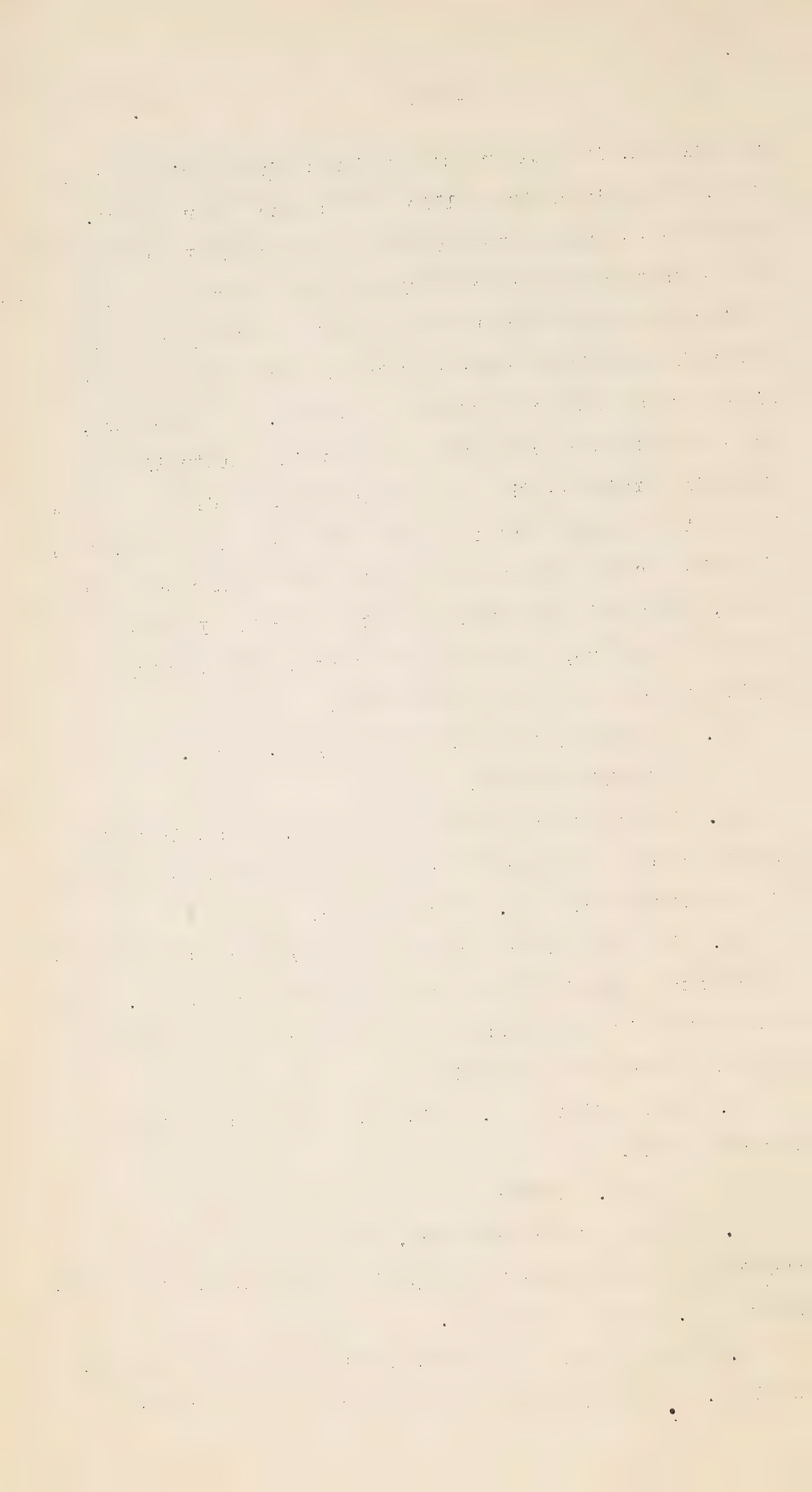
Q. That the export branch of the grain business is not a necessary element of any particular enterprise? A. You mean that it is not necessary for the larger companies to have any export departments?

Q. Yes, quite? A. Oh, no. It is an entirely separate field.

BY MR. PARKER:

Q. It may not be necessary, but it may be at least useful and advantageous to the pool to have an export department? A. That might be so.

Q. Then I turn to page 10, which deals with your submissions. This may relate just to the point the Chairman



mentioned:

"Although we have taken pains to indicate that the operations of the Saskatchewan Pool in the export markets are not a necessary part of the marketing functions which it was organized to perform for its members, we do not mean to suggest that this is a basic factor for the purposes of our submissions."

I do not quite get what you are driving at there. You say it is not a necessary part of the organization, but it may be a very desirable and useful part? A. Yes, and we are not objecting to or criticizing it.

Q. Your only objection is that if they wish to carry it on, they should carry it on under equal conditions with yourselves? A. Yes, under equal conditions.

Q. Under similar conditions? A. Yes.

Q. Namely, conditions of taxation? A. Yes.

Q. Then will you just clarify something on page 11 for me, if you please:

"We do make the point, however, that if the Saskatchewan Pool has been the marketing agent for its members -- which we do not admit but deny -- "

I wonder if that is correct. Have they not been marketing agents for their members? Is that not really what their export business is all the way down through the piece? Why do you deny that to be the position? It seems to me the evidence is to the contrary. A. I think you have to take the whole paragraph, where we say that its export business had nothing to do with the discharge of its duties as marketing agents. In other words it could market the grain of its members without being in the export field.

Q. You go on to say:

"The fundamental premise for our submission is that this pool is carrying on this export business for the purpose of deriving additional profit or gain."

That is what we discussed before? A. Yes, sir. I am sure they try to get a profit.

Q. You say that is what they are in it for, to make a profit. I suggest that they are in it in order to have a bigger return for their members? A. They are not, in my humble opinion, overlooking the profit motive. There may be other purposes.

Q. You think it is the profit motive which induces them to get into the export field? A. I think probably it is an incentive to them under their present circumstances, if they do not have to pay any taxes on that profit.

Q. That is perhaps relating to the crux of the whole matter. You say you think they have a profit motive. They come before this Commission and state definitely that they have not a profit motive. A. Oh, that is all right, then.

Q. You think they have, and they say they have not. What is the truth in between the two? A. I do not know what the answer is to that.

Q. You do not know the answer? A. No.

Q. And you cannot point us to any facts to indicate what you say is correct, and that what they say is wrong? A. No. We still contend that in the opinion of our group the profit motive enters into it, and the Saskatchewan Pool apparently says it does not, so there the matter rests. But it does not mean I have to change my opinion.

Q. Quite so; I am not seeking to get you to change your opinion. I would not do that for the world.

BY MR. ARNASON:

Q. With further reference to that second paragraph on

page 11, and with particular reference to this part of the paragraph where you say --

"-- its export business had nothing to do with the discharge of its duties as a marketing agent --"

I wonder whether you would clarify that for me?

A. The thought there, sir, is that in order to market their grain they did not have to get into the export field. They could have sold it at their terminals, and so on.

Q. Agreed; but is not the export business merely carrying the handling of grain one step further? A. Yes.

Q. I wondered why you worded your statement in such a positive fashion as that? A. Well, perhaps it is a little positive, but that is the interpretation or at least that is what is intended in the statement; that they actually, in order to market the grain of their members, did not have to get into the export field.

BY MR. ELLIOTT:

Q. You are saying that they might market their grain without exporting it. You do not intend to say that exporting is not marketing? A. Oh, no, sir; by no means.

BY MR. PARKER:

Q. Then go on to the next paragraph, the last sentence: "--we are paying income and excess profits taxes in respect to the profits or gains we contrive to make in carrying on precisely the same kind of business in direct competition with this pool."

I suggest to you that this needs some modification. I suggest that you are not carrying on precisely the same kind of business; your method of operation, being primarily only an exporting company, makes it an entirely different business from that of the pool, which is carrying on a much larger

business, right from the grower's cart through to the export market, and that you cannot divide it into compartments in that way. I suggest that your proposition is unsound, because you are not carrying on precisely the same kind of business? A. No. We are only making the point there that in the export field we are performing the same function. We are not talking about their country operations.

Q. I realize that; but I am suggesting that you cannot logically take out one little bit of their entire chain of business and say that one thing, taken out of its setting, is the same as yours, which has no other complications. Do you see my point? A. I cannot agree with you.

Q. You see the point, but you do not agree? A. I do not entirely see, but what I do see I do not agree with. May I say I know nothing about country operations; but in the export field we feel that they carry out that business identically the same as we do, and that is all that is intended there.

Q. Now I go to page 12, and I have just one other question. In the middle of the page you say:

"This pool cut its country elevator charges last fall to a level where, we are reliably informed, they do not cover the cost of the services rendered."

That sounds like the editorial "we" in the newspapers; "we are informed" or "they say." Who are your informants on that; do you mind telling us? A. No; I would be very foolish if I did not tell you. Some of the elevator companies told us that, gave us that information.

Q. Some of the North-West Line Elevators? A. Yes.

Q. Anybody else? A. No. That impression was created, and in conversation with elevator men members of our

association were definitely told that this was definitely the case, that it would not cover the cost of the service.

Q. Let us get this straight. The elevators told you that the level to which they, the elevator companies, that is the line companies, had reduced their charges, was below the cost to the line companies; or did they tell you it was below the cost as operated by the pool, or both? A. I may be wrong, because as I say I know nothing about the country elevators; but I thought they put certain qualifications on that remark, "depending on the volume of business they handled." I thought that was what they said.

Q. Do you want to put any qualifications on it? A. No, we have just put into this brief what we have been told, and we felt it was reliable information. That is all. I do not want to modify it at all.

Q. You say you are reliably informed?

MR. FILLMORE: I think the Commission has been reliably informed to that effect by people under oath, during the sittings here.

MR. PARKER: That is all, thank you.

BY MR. MILLIKEN:

Q. Mr. Reece, just dealing with the question that has been under discussion, and dealing with pages 10, 11 and 12, I think possibly the second paragraph on page 11 gives us the picture pretty well:

"We do make the point, however, that if the Saskatchewan Pool had been the marketing agent for its members -- its export business had nothing to do with the discharge of its duties as a marketing agent."

You have been in the grain business at least since 1924, have you, Mr. Reece? A. Yes.

Q. You are aware of the fact, or do you admit it to be a fact, that the three wheat pools, between 1924 and 1931, through their central selling agency, endeavoured to export all the wheat of their members? A. They did try, until they closed up.

Q. In other words the original idea of the agency agreement of the Saskatchewan Wheat Pool was to export the wheat of their members? A. I could not say that, but you formed three pools and operated an export business through the central selling agency.

Q. The three wheat pools did the very thing which you are suggesting, in this paragraph on page 11, was not the duty of the pool as a marketing agency. That is correct, is it not? A. Would you repeat that?

Q. I say the three pools, while they operated under the original agency agreement, did the very thing which you are saying on page 11 that the Saskatchewan Pool, as a marketing agency, should not do in the discharge of its duties as a marketing agency; that is, it should not be in the export business. They did that very thing; and I am suggesting to you, Mr. Reece, that the whole conception of the wheat pools, and their original conception, was to do that very thing?

A. Go into the export field?

Q. To sell the wheat to the ultimate consumer? A. Yes, I think it was; but you will remember, Mr. Milliken, that they had rather an unhappy experience in the central selling agency.

Q. I am quite well aware of that unhappy experience; but that was the original conception of the pool? A. It probably was. I was not very familiar with that.

Q. There is one other question I want to mention, Mr. Reece, and that is with regard to export sales. I am

referring now to your figures on the bottom of page 2. I take it that because the Saskatchewan Pool shows these figures which you have quoted as having been handled through their export department, you have not made any attempt to ascertain whether they include feeds shipped to eastern Canada? A. I believe it includes both.

Q. Shipped to eastern Canada? A. Shipped to eastern Canada and possibly to the United States.

Q. And wheat shipped to the United States? A. Yes. It will save you a good deal of time, and save my time as well, if I say the only purpose in showing those figures is to show how tremendously your business has increased. I don't care how you split it up.

Q. That is not what I have in mind at all. Do you or do you not know that every elevator company carrying on business in western Canada last fall did the same kind of business of shipping feeds to the United States, to the east, and wheat to the United States? A. Yes, you all did that. I would not say they all did, but nearly all.

Q. They practically all did the same business? A. Yes.

Q. So really the only export business in which you are interested is the part the Saskatchewan Pool shipped overseas?

A. And I would say that the major portion would be overseas.

Q. You are not in competition with them, except in the export overseas; is that correct? A. We are in competition with them in the sale of things like oats to the United States. Yes; we find them very keen.

Q. But as far as you know practically all the other elevator companies were doing the same thing? A. Not all of them; nearly all.

Q. Only they did not call it exporting? A. I do not know what they called it, but that was an exceptional year, when most of them were doing it. I will agree with that.

THE CHAIRMAN: Just as a matter of interest, since I do not see either Mr. Porter or Mr. Scarth here, do you know why the other pools abandoned the export field, Mr. Milliken?

MR. MILLIKEN: The situation was this. The three of them were never in the field as individual pools; it was done through the central selling agency. That is, the Canadian Co-operative Wheat Producers Limited was the central selling agency which marketed all the wheat of the three pools from 1924 to the end of 1931. That selling agency did all the exporting. From 1931 on the pools were so busy trying to keep from going under, trying to pay the governments what they owed them, that they all stayed out of the export business for a few years. The other two did not go back in, for no particular reason. Possibly one reason why we got back in so readily was because we happened to have a representative left in London, who had been interested in the export business when the pools were in it. I am sorry I cannot tell you why they have never seen fit to go into it again. I think Mr. Reece might tell you that it is a very narrow margin business, is it not?

THE WITNESS: Yes, it is a difficult business, requiring a good deal of experience. You cannot just jump into it and be successful.

BY MR. ELLIOTT:

Q. Mr. Reece, with regard to this same table on page 2, at the beginning of that section you say:

"The Saskatchewan Pool has become one of the largest exporters of Canadian grain."

Have you figures to show what other exporters have exported during these same years? A. No, I have not the actual figures, but what I have is the information that was pretty thoroughly discussed by the group of exporters who have subscribed to this brief. We have all increased our sales; we are perfectly frank about that. But these are out of proportion to what has been done by the other companies. For instance, I know my own company --

Q. But these figures in themselves cannot show that, taken alone? A. No. But I do know that theirs has been the biggest increase of all the people in the export field.

Q. In percentage of some particular year, or exactly what do you mean? A. I would say in relationship to what they did prior to the war.

Q. But you have not the figures to support that? A. No, I have not; I am sorry. I can get them.

BY MR. MILLIKEN:

Q. Just to clarify another point, Mr. Reece, you did not start these figures with the year 1939 merely because you were just putting in so many years? The year 1938-39 was when the pool elevators first entered the export business; is that correct? A. That would be the first year we could put them in.

Q. I am merely asking, to clarify the position for the Commission. That was the first year the pool elevators went into the export business? A. Yes.

Q. So they were starting from nothing when they started with 9,000,000 bushels the first year? A. Yes.

THE CHAIRMAN: That also was a bad year, I understand.

MR. MILLIKEN: It certainly was not a good one.

BY MR. NADEAU:

Q. Do you know, Mr. Reece, whether the two other pools endeavour to export their grain through the Saskatchewan Pool?

A. Oh, I would sooner Mr. Milliken would answer that.

MR. MILLIKEN: I think the answer would have to be no. There is no deliberate attempt made by the other two pools to export through Saskatchewan.

THE CHAIRMAN: There is no agreement in effect?

MR. MILLIKEN: None at all, sir. Saskatchewan is handling much more wheat than it is able to export, on its own.

BY MR. FILLMORE:

Q. Mr. Reece, do you understand that prior to 1931 members of the pools signed a contract; in other words there was a contractual marketing agreement in effect up until 1931?

A. I do not quite understand that question.

Q. Are you aware of the fact that prior to 1931 the pools operated what has been called a contract pool? In other words, that there was a contract between the pool and each member under which the member undertook to deliver all his grain to the pool, and they agreed to market the grain as his agent, subject to the terms set out in the agreement.

A. I am not very familiar with that.

MR. FILLMORE: That is in evidence before the Commission.

THE CHAIRMAN: Yes.

MR. FILLMORE: You have copies of the agreement, and the history of it?

THE CHAIRMAN: Yes.

BY MR. FILLMORE:

Q. Do you know whether, since 1931, grain has been marketed under contract; whether pool members are free to

sell to their own elevators or to other elevators, and whether the pools have been buying grain from members and non-members alike? A. I understand they have bought it from members and non-members alike.

Q. In the same manner as other elevator companies, and not under any contract? A. No.

Q. So the central selling agency was the marketing agent for the three pools? A. Yes.

Q. During the period of the contract pools? A. Yes. I imagine that is so.

MR. MILLIKEN: That is just the statement I made a few moments ago, sir.

BY MR. FILLMORE:

Q. And under present conditions the Saskatchewan Pool and other pools are buying and selling and marketing their own grain, and not the grain of members only? A. They are marketing any grain at all, buying from other people and that sort of thing. In other words they are doing generally what we do.

MR. FILLMORE: I think the method of present operation is already before the Commission. We have shown the change that took place in 1931, and before that time there was a contract marketing agency.

THE CHAIRMAN: Yes. Mr. Reece does not pretend to answer that question.

MR. MILLIKEN: Is it understood, Mr. Chairman, that you would like me to obtain the breakdown of these export figures, or does that matter?

THE CHAIRMAN: I think that would be interesting, to have a breakdown of those figures.

MR. MILLIKEN: Very well; I will get that for you.

MR. FILLMORE: There is one other observation I would like to make before leaving this brief. From our point of view we say it is incorrect now to speak of members' grain. We say that since 1930 that grain has been purchased, and from then on it is the grain of the pool; that they are not now marketing the grain of their members.

THE CHAIRMAN: That is the point of view which has been expressed. Does that conclude this brief?

MR. FILLMORE: Yes.

THE CHAIRMAN: What do we take now?

MR. PARKER: The next brief is one signed by Professor John L. McDougall. I understand Mr. Fillmore is representing him.

MR. FILLMORE: I do not think, Mr. Commissioners, that this is an occasion to put the learned gentleman under oath.

THE CHAIRMAN: What do counsel think about that?

MR. PARKER: Perhaps it is not a very important point, but we have been following the practice of putting the witnesses under oath in respect of all questions of fact.

THE CHAIRMAN: I think we had better follow the same procedure, in case there might be any objection.

MR. PARKER: It can do no harm to swear the witness.

PROFESSOR JOHN L. McDOUGALL

Associate Professor of Commerce,
Queen's University,
having been duly sworn,
testified as follows:

THE CHAIRMAN: I take it that this brief is in support of the line elevator companies.

MR. FILLMORE: Yes.

BY MR. FILLMORE:

Q. Your full name is John L. McDougall? A. Yes.

Q. And you are what? A. I am Associate Professor of Commerce at Queen's University.

Q. How long have you occupied that position?

A. I have been at Queen's since the beginning of 1932. I think I have been Associate Professor for either two or three years, I am not sure which.

Q. And, prior to that, from what schools did you graduate, or where did you study? A. I took my

degree in economics at the University of Toronto, and later my M.A. Following that I studied at the London School of Economics, and Harvard University. I taught at the University of Texas and the University of Toronto. Then I was in the investment business for five years, and then I came to Queen's University.

Q. Have you made investigations and reports for different branches of the federal and provincial governments? A. Yes, I have done work for the Department of Labour. I have also done work for various private interests.

Q. And have you had articles published in respect of your subject? A. Yes, in the Canadian Journal of Economics and Political Science, and in the Canadian Banker, and in The Canadian Chartered Accountant; and I have also had works published by Messrs. Longman - Green and Company, and by Ryerson Press.

Q. And your report, Professor McDougall, has been prepared at the request of The North West Line Elevators Association? A. Yes.

Q. And I take it that you are expressing your own views to the best of your ability under the circumstances? A.. Yes.

Q. All right, will you proceed with the reading of your brief. A. Yes. The brief is as follows:

"I - Introduction

"I appear before you at the request of The North West Line Elevators Association which has asked me to study in my professional capacity the problem which is yours for investigation and to report upon it directly to you. I have tried to approach the problem broadly and from the

standpoint of the general public interest. I shall now try to speak upon it, not as the advocate and defender of any special interest, but responsibly and as a citizen who has had the advantage of special training and experience in the art and science of political economy.

"In view of the difficulty of defining a cooperative, a difficulty which has already been rather fully explored before you, I shall define the term broadly. The word cooperative as used in this report is to be taken to mean any business, whether trading or manufacturing, or both, including its subsidiaries, and its sub-subsidiaries to any degree, which is permitted to use that term in its corporate name or as descriptive of its operations, or which, in the absence of such permission, has assumed it and has not been denied its continued use by legal process, and which has had the advantage of tax exemption.

"Since I cannot know everything concerning all the cooperatives, as so defined, which operate in this country, I have naturally looked first at those which are largest and most fully developed, namely, the wheat pools of the prairie west. They have had the time and the means to develop fully the tendencies which are present only in rudimentary form in the newer and (presently) smaller cooperatives. But the principles developed in respect of the large can be applied, with appropriate changes to all cooperatives.

"In particular, I shall address myself (a) to the nature of mutuality and the claim of cooperatives as they currently operate in Canada to come under that rule, (b) to the nature of British precedents in this matter and to the adjustments required in order to apply them logically in this country, and (c) to a discussion of

"what would, in the public interest constitute a just, fair and equitable basis for the application of the Income War Tax Act and Excess Profits Tax Act, 1940 to cooperatives and to persons other than cooperatives in respect of methods of doing business analogous to cooperative methods, such as the making of payments commonly called patronage dividends and to make such recommendations for the amendment of existing laws as they consider to be justified in the public interest.

(Note: P.C. 8725, November 16, 1944.)"

Then, since up to this point the record does not disclose much discussion with respect to the doctrine of mutuality, I shall, with the permission of the Commission, pass over this section and not read it.

MR. PARKER: Let us have an understanding on that; do I understand that section II is being withdrawn?

THE WITNESS: No, by no means.

MR. PARKER: It is not being withdrawn?

THE WITNESS: No. The brief continues:

"II - The Doctrine of Mutuality

"Simply stated, the doctrine of mutuality is that profit cannot be made by trading with oneself. There is, I trust, no presumption in suggesting that when the application of this principle was extended from the highly special field of insurance to the general field of trade, it seems to have been done without a full realization of the extent to which the two were not comparable.

"If B goes into a retail store and buys five pounds of sugar, he gives up forty cents, the store gives up the sugar, and the whole transaction is closed. This is true whether the store is owned by a private individual, or

by a limited company with share capital, or by a limited company with open membership trading as a cooperative. In the case of the cooperative store, a legal person, it has sold sugar to B at a price set by itself. It sets that price with full knowledge of the cost of that sugar to it, and with a pretty clear idea of the cost of replenishing its stock.

"The essence of insurance is that it can never give rise to a similarly closed transaction. Every insurance contract extends over a period of time and provides against risks which are quite incalculable at the time it is written. If B instead of buying sugar had bought protection upon his life he would be entering into a contract the duration and uncertainty of which are its chief characteristics.

"A whole life policy issued at age twenty-one has a mean expectation of a term of forty-six years. Provision must be made for an extreme duration of seventy-five years; and anything less than a whole life coverage would greatly reduce the value of the contract to many if not to most insurers.

"Secondly, the extent of the risk attached to insurance on any individual life is absolutely incalculable. The business is possible only upon the basis of averaging the risks upon many lives. Even upon that basis there is a substantial element of uncertainty due to possible future changes against which it is wise to provide by charging rates which are higher than necessary to meet the costs of insurance under the conditions most likely to be met with in the future. As time passes and risks stay within the expected limits it becomes necessary to dispose of these excess payments. This is done, either by the

the payment of periodic cash dividends upon the policy, or by making uncovenanted bonus additions to the sum assured.

"Thirdly, practically all life insurance is conducted at level premium rates and a reserve is accumulated on each policy in the early years against the heavier costs which come as the rate of mortality rises. \$100 per year for fifty years amounts to \$8457.94 when accumulated at 2 per cent; to \$20,934.80 when accumulated at 5 per cent. Since it is impossible to forecast future interest rates, provision must be made for variations in them as well as in the average duration of life.

"Fourthly, the business of life insurance is all of one kind. It is primarily concerned with contracting to indemnify individuals, or their estates, in the event of specific independent events taking place. It is quite different from the merchant business in which one division may make losses and another profits.

"To this point attention has been concentrated on the business of life insurance, but all that has been said above applies, with appropriate changes, to insurance of other types. It is true that the contracts in such other types are made for shorter terms, but the risks are larger, they are less predictable, and they are not independent. For these reasons these other types of insurance are also sharply distinct from the purchase and sale of goods.

"Upon these grounds, then, I suggest, first, that arguments arising in and based on the nature of the business of insurance are not to be applied to other types of business uncritically and with substantial adjustment for the radical change in the nature of the business done. There are substantial grounds for inviting the insurance policy holder to bear a part of the risk,

there is no corresponding need in any ordinary commercial or manufacturing business to ask the customer to do so. It may be desirable that he should do so. To take the specific example of grain-growing it is most desirable that farmers should know as much as possible of the problems and of the costs of marketing the grain they grow. But this ranks as a piece of desirable adult education; it is not a necessity of the trade.

"Secondly, while the Board of Inland Revenue which is charged with the administration of the British income tax has naturally accepted the ruling decision in the Styles case, and has done its best to apply it, it has never been confident that it fully understood how the House of Lords ever arrived at it.

(Note: New York Life Insurance Company v. Styles -
14 Appeal Cases (1889), pp. 381-413.)

The following quotations from the examination of Mr. E. Stanford London who spoke for the board before the (U.K.) Royal Commission on Income Tax, 1918-20, are particularly interesting, partly because they show the attitude of the board so clearly, partly because of the experience of the commissioner who put the questions:

"19615. Sir E. Nott-Bower: I agree. I have great sympathy with people who think that that judgment goes a great deal too far, because I was in the inland revenue before the decision of the House of Lords in the New York Life case. I remember that we fought that case right up to the House of Lords. Our view throughout was that the profit was chargeable, but the highest courts of the land have said that it was not, but that the mutuality covered them? - That is the whole trouble that we have been

faced with.

"19629. Before the decision of the New York Life case, if the board had been asked whether, if it had not been for the statute in question, the surplus of a cooperative society was chargeable, they would probably have replied 'Yes', would they not? - I think it is perfectly right to say that they were of that opinion until the New York Life decision was given.

(Note: Cmd. 288. Evidence before the (U.K.) Royal Commission on the income tax (London: H.M. Stationery Office, 1919-20, pp. 962-3. This evidence was published serially in seven parts over the years 1919 and 1920. Hereafter it will be referred to by its official number and the word evidence only.)

"Not long thereafter the board again took the question up to the House of Lords, claiming tax upon the whole surplus of a mutual insurance society which had no shares and which did not trade with non-members.

(Note: Jones v. South-West Lancashire Coal Owners Association, 1927 Appeal Cases, pp. 827-34.)

It did so despite the fact that neither of the lower courts would entertain its contention. It is therefore clear that the principle of mutuality was one which the board was compelled to apply, it was not one which it felt able to support either on grounds of logic or of public policy. This was not an opinion held at one time during a particular composition of the board. It was quite as clearly its attitude at 1927 as at 1888-9.

"Thirdly, the decision in Styles' case which marks the high-water mark in the extension of this principle is a blurred decision. The distinction between it and that

1. 500

in Last's case which was decided four years earlier, was made on the basis of the management of the funds and not on the question whether profit was or was not made.

(Note: Last v. London Life Assurance Corporation, Appeal Cases, vol. 10, 1885.)

"It is quite true that in a mutual insurance company without share capital and issuing participating policies, the policy holders must be their own guarantors. But if the company is a legal entity duly incorporated and with perpetual succession, its existence is the crucial fact. The individual policy holder does not meet and enter into a contract with his fellows in that relationship. He contracts with the company. What it distributes to its participating policy holders is not a refund of money paid in by them, carefully earmarked and then returned at the end of the year, it is a proportionate part of trading profit or gain derived from the whole of its operations as an economic entity. Without the company as the central fact of organization it would be quite impossible to assemble a sufficient number of policy holders to convert the scheme from a gamble based on a few lives to a reasonable venture based upon a number adequate to reduce the risks to predictable limits. The company's separate and independent existence and the profits or gains accruing to it as a legal person are stubborn economic facts which cannot be washed away by any process of logic.

(Note: In the opinion of Mr. London, this was the point on which the whole case for the cooperatives stood or fell.

19562. Mr. Synnott. I have only one more question, and that is, if it be the fact in law and common sense that the members are not the society, the root of

your argument goes?--- Yes, if the members are not the society. I think so.

Cmd. 288 (1919-20) Evidence, pp. 960-61.)

"This is a question which did not come before the court. For reasons which do not now appear, the Attorney General who conducted the case for the crown elected to argue it upon the basis that the incorporation was of no importance. This point is covered in the following exchange between Duncan MacKenzie Kerly, a member of the same commission and who was himself a barrister, and Mr. London.

19685. Mr. Kerly: Perhaps you have never looked at the argument that was put up for the crown in that case. It seems to me to have made the case far less valuable than it would have been because of what appears to me to be the extraordinary admissions upon which it was based. They did not discuss the mutuality question; they admitted it?--- The courts did not discuss it?

19686. No, counsel for the crown, who were arguing that the assurance company should be taxed. It may have been quite right, or quite wrong, but the matter was not put forward by the department as you rather suggested it was, or at any rate by the law officers, that mutuality prevented trading profit. That was assumed. It may have been right or wrong, but I do not want to say any more about that? -- I think so, but the Lords in their judgment referred very pointedly to the mutuality question, and bring out that point that there could not be profits.

19687. Again, speaking only as a lawyer, the Lords seem to me to have founded themselves upon a most strange proposition. They forget that they are dealing with the question of whether the corporation is liable, and their conclusion is that the traders are not traders, which is not the same question? --- Quite so.

(Note: Cmd. 288 (1919-20), pp. 962-63.)

"In other words this is a decision which might have been altered if the full facts of the case had been brought before the court.

"How those profits may be distributed afterward, - to whom, in what manner, at what time or times, - are each of them conceptually separate questions. They have no bearing upon the question of whether a profit is or is not earned by a company as a separate legal entity.

III - The British Precedents

"It is inevitable that British precedents should be considered with very close attention in all questions concerning cooperatives. Cooperative companies in this country sprang from the direct example of their British counterparts and from the initiative of British immigrants who had been members of such societies before coming to Canada. It is natural that administrators should acquaint themselves with what had been done in Great Britain before making decisions upon questions posed by the rise of the same form of business organization in this country. But British precedents cannot be transplanted bodily and without change. These are two different countries. They are different in their economic conditions and in certain of their institutions, to name only two major points.

1. The first part of the report deals with the general situation of the country and the progress of the work.

2. The second part of the report deals with the results of the work and the progress of the work.

3. The third part of the report deals with the results of the work and the progress of the work.

4. The fourth part of the report deals with the results of the work and the progress of the work.

5. The fifth part of the report deals with the results of the work and the progress of the work.

6. The sixth part of the report deals with the results of the work and the progress of the work.

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8. The eighth part of the report deals with the results of the work and the progress of the work.

9. The ninth part of the report deals with the results of the work and the progress of the work.

10. The tenth part of the report deals with the results of the work and the progress of the work.

11. The eleventh part of the report deals with the results of the work and the progress of the work.

12. The twelfth part of the report deals with the results of the work and the progress of the work.

13. The thirteenth part of the report deals with the results of the work and the progress of the work.

14. The fourteenth part of the report deals with the results of the work and the progress of the work.

15. The fifteenth part of the report deals with the results of the work and the progress of the work.

All substantial differences should be clearly recognized and allowed for if precedents established in Great Britain are to be fruitfully followed here.

"For present purposes, the most important difference is that the Canadian income tax system has always levied a tax upon the income of corporations as well as on that of individuals. As a result, the income of corporations is taxed twice; once when it is received by the corporation, and again when that part of it which is not absorbed by the corporation tax is paid out in dividends to the shareholders. No allowance is made to the shareholder for the fact that the income he receives has already been taxed once. This is true double taxation.

"This is totally foreign to British practice. In Great Britain taxes on corporate income are levied in time of war; and at such times cooperatives as well as other corporations are required to pay them.

(Note: In the first war they were made subject to the excess profits duty by Finance (No.2) Act, 1915, 5 and 6 Geo. 5, Ch. 89 (see section 40 and schedule 4, paragraph 10).

Section 40 (1) reads 'The profits arising from any trade or business to which this part of this act applies.....' The anomaly of accepting the profits or gains of cooperatives for purposes of excess profits duty, but of refusing so to treat them for purposes of income tax was not lost upon the (U.K.) Royal Commission on Income Tax. (See Ibid., para. 19575).

In the present war they were again brought under the same tax.)

"But in more nearly normal times the British income tax

is a personal tax which is, so far as possible, collected at the source. The corporation is therefore responsible for seeing that tax is paid and remits the tax at the normal rate upon its whole income; but it can recoup itself out of the dividends which are payable to its shareholders. That is, the statement furnished with a dividend cheque when the normal tax is five shillings in the pound would read as follows:

gross dividend declared	£100
less income tax paid on your behalf	<u>25</u>
Balance for which cheque is enclosed herewith	£ 75

"In other words the British income tax is not a tax upon corporate income at all, it is a collection at the source of the tax upon individual income. If the dividend paid in any year is equal to or exceeds the amount of the corporation's taxable earnings in that year, then the whole of the tax falls upon the shareholders. If part of the income is not distributed, then normal tax upon that part, and that only, falls upon the corporation. But the object is not to tax the corporate income, it is to do justice by making certain that all the taxable income of the year is assessed to tax.

(Note: If undistributed corporate income were to be left untaxed, then the liability to tax would be determined by the subjective decision of boards of directors and not by objective fact that taxable income had been earned.)

"This point is crucial. In Canada, a tax levied against a corporation is final; whereas in England a shareholder whose total income is below the exemption limit can apply for, and will receive as a matter of course, a refund from the treasury of the amount which

was paid to it by the company on his behalf. In Great Britain the payment by the company is a device to simplify administration; in Canada it is a true tax upon the income in the hands of the corporation.

"The bearing of this difference upon the exemption of cooperatives from the British income tax upon trading profits (schedule D) was covered by seven members of the (U.K.) Royal Commission on the Income Tax in a reservation to the main report in which they say, in part:

'4. If there were in the United Kingdom, as there is in the United States of America, a corporation tax levied specially on corporations as such, it would, no doubt, be proper that a cooperative society should, as a separate legal entity, be made liable to that tax. But the income tax is not a corporation tax. It is a tax upon the incomes or profits of individuals, and though for convenience it is assessed in the first instance upon corporations in which they hold interests, the amount of it is always adjusted to the income not of the corporation, but of the individual shareholders. It is true that, when a company receives profits which it does not distribute, the profits are taxed at the standard rate. But it is universally recognized that the reason for this is, not that the company as such is liable to income tax, but that it is impracticable to tax the separate parts of a company's undistributed profit at the rates to which the separate shareholders to whom those parts ultimately belong are respectively liable. The mere fact, therefore, that a number of individuals have formed themselves into a separate legal entity

does not constitute the receipts of this legal entity a taxable profit under any part of the British Income Tax law.

(Note: Cmd. 615 (1920. Report of the Royal Commission on the Income Tax (London: H. M. Stationery Office, 1920) p. 164.)

"Professor Pigou, the most distinguished living member of the Cambridge School of economic theorists, was a member of that commission and was one of the signatories of that reservation. He has also been a very warm friend of the cooperatives. But in discussing this question later in the year he came again over the same ground in the following words:

'The majority of the Royal Commission on the Income Tax, while agreeing that the part of the proceeds of mutual trading which is distributed in "divis." is not profit, claim that the (much smaller) part which is retained by the societies and placed to reserve is profit. They base their view upon a distinction between cooperative societies, as separate legal entities, and their members as individuals. The societies, they say, after payment of their dividends on purchases, which are in the nature of discounts, make out of the balance of their net receipts an ordinary money profit, which, just like any other money profit, is properly taxable. Now, no doubt for the purpose of a corporation tax, this contention would be valid. But for the purpose of income tax companies and corporations are not, as companies and corporations, liable to tax; they are merely channels through which, with as much accuracy as practical conditions allow, the taxation

due from their members is collected. Hence, if the money put to reserve by cooperative societies is taxable profit at all, it must be taxable profit of the members. But to decide that the proceeds of mutual trade are not profits from the income tax point of view when they are distributed in dividends on purchases, and are profits when they are not so distributed, is to make the nature of these proceeds depend, not on their origin which is clearly the proper test - but on their destination, which is no test at all. This contention of the majority of the royal commissioners seems to me to break down completely before this objection.'

(Note: 'Co-operative Societies and Income Tax,' Economic Journal, XXX (1920), p. 157).

"In other words there is the clearest possible recognition that if Great Britain had a corporation income tax such as Canada has had since 1917 (and is likely to retain into the indefinite future because of the need for revenue) then the whole earnings of the cooperatives would be taxable thereunder regardless of whether it was paid out as patronage dividend or otherwise, or was put to reserve.

"Secondly, the British cooperative societies have never lost the marks of their early origin as experiments in self-help among the economically depressed. The original Rochdale cooperative was a last desperate attempt at self-help by people who trembled upon the edge of economic obliteration. They were hand-loom weavers who had been the aristocrats of the working classes at the opening of the century and who were now making their last pitiful stand against power weaving.

The legal status accorded them in the early years of the movement was in the nature of charitable help given to a deeply depressed segment of the community. It had the further defence that if they were not encouraged to help themselves they would give up entirely and go into the poor house as public charges. Their earliest incorporation was under the Friendly Societies Act of 1846 and it is significant that they are still incorporated under the Industrial and Provident Societies Acts.

(Note: Upon this point, see C.R. Fay, 'Co-operatives and the State', Economic Journal XXXIII (1933), 414 ff.)"

I might also refer the Commission to Beatrice Potter's Co-operative Movement in Great Britain, published in London by Sonnenschein and Company in 1895, which covers that same point.

"As a matter of historic fact the highly favourable position of the cooperatives in Great Britain with respect to tax upon their profits would never have been attained without that background of charitable help to a struggling group."

Another part of the same argument was this, that since income tax was strictly a tax upon individuals and since very many of the members of the consumers' co-operative societies in Great Britain were below the exemption limit, therefore it was administratively desirable not to stop at the source in this case; where in the case of the limited company, where a far higher proportion were taxable, you did. That is, there was an administrative advantage rather than any point of a principle, in the beginning.

"IV - General Economic Considerations

"There are certain arguments which have been advanced in support of the maintenance of the tax free position of cooperatives which require to be dealt with.

They are:

- (a) that, because the cooperatives have the power to vary their charges so as to reduce their profits (or even to convert them into losses), they are not profits at all.
- (b) that the profits or gains of a cooperative are such in appearance only. In the case of the consumers' cooperative they are merely a saving effected by joint purchasing of consumable goods. Therefore, not being profits, they are not taxable when earned by the cooperative, nor when paid to the member. In the case of the producers' cooperative they are equally not a profit, but, in so far as they arise from goods produced in or necessary to his trade or business they should be included in the member's income tax return.
- (c) that the whole of the profit or gain of a cooperative society is due to the patronage of its members.
- (d) that because the taxable income of the members of producers' cooperatives is increased by the patronage dividends which they receive, therefore there is no discrimination in failing to tax that income while it is in the hands of the cooperative as a trading organization.

"In addition thereto it is necessary to examine the consequences to the tax system and to the distribution of the profits or gains from trade which arise when one sector of the trading community is totally exempt from

the most important part of the total tax-load while its competitors find their taxes progressively increased.

"The first of these arguments, namely that what appears to be profit is really not that at all because it can be made to disappear at will by reducing selling prices or by increasing buying prices, rests upon a fallacy in logic. The cooperative form has no monopoly over this escape from taxation. Any business can reduce its prices to the point where there is no profit and it will then pay neither income nor excess profit taxes. But the decision to do so is one which affects the amount of profits, not their nature. If profits do not exist, they cannot be taxed; if they do exist, they ought to be taxed under one law, equally applied, no matter who the receiver of them may be.

"The second argument, - namely that the profits or gains of a cooperative are not truly profit, but a 'saving', a 'surplus', or the 'refund of a provisional over-charge', and in any case something other than profits because co-operatives do not seek profit, can be accepted only if the cooperative does not trade in its own name.

(Note: Mr. John Montgomerie, one of the witnesses before the British Royal Commission on the Income Tax, showed very clearly that the British cooperatives abandoned the word 'profit' and began to describe their profits or gains as 'surplus' in the years 1915-17 when the weight of taxation began to be felt; this despite the fact that the Industrial and Provident Societies Acts under which they were organized called for a statement in their rules of 'a mode for the application of profits'. (See Cmd. 288 (1919-20) Evidence, pp. 874-5. Paras. 17639-54

inclusive, and also appendix 28.)

Time has not permitted the same careful documentation of this change in Canada, but the indications are that it has come since 1939, and for identical reasons.

"If it, the cooperative, acts as an agent or broker upon the instructions of its members it need charge only enough to cover its necessary outlays. But when it buys outright at one price and sells at another it appears as a principal in the transaction. This is true alike of producers' and of consumers' cooperatives.

"As a principal it must either (a) make profit, or (b) withdraw from trade altogether, or (c) draw subsidy from some source or other in order to remain in existence. Whether its management does or does not wish to make profit or gains is immaterial. The members, the directors and the appointed managers may all be of one mind in wanting only to be of service and to avoid profit like the plague. But the fact is that the winning of a profit is the price of survival. Without profit the cooperative cannot balance its accounts. And if, being legally incorporated and enjoying all the advantages of legal incorporation, of limited liability and of perpetual succession, it makes a profit, it is inevitably liable to corporation income and excess profits taxes.

"The nature of the cooperative dividend now shows up clearly as a device to attract and retain custom for a business organization. It is not a refund. If it were that, it would be an ordinary trade discount whose amount is fixed, which is announced in advance and which is quite unchanged for years on end. It would be clearly shown on every invoice, as for example, 'two per cent ten days,

net thirty days' which is a common trade term.

"But it is not a discount. The cooperative trades as a principal and then periodically casts up its accounts, determines the amount of its profits, and then decides how much of that profit shall be paid out to its members as a patronage dividend and how much shall be retained to increase the capital upon which it trades. The opportunity to share in the profits of a trading operation is one of the prime attractions offered by cooperatives to their members; and, naturally, the greater the weight of taxation on others, the greater the rewards of membership in a tax-free cooperative.

"Perhaps the true position is made clearest if the alternative applications of those profits or gains is explored. Let it be supposed that a consumers' cooperative exists in which each of the members holds one share and from which each buys an equal amount in the year. Then when the year's profit is to be divided, it is--tax effects being set aside--a matter of indifference to the members whether the profit is paid on the basis of share capital owned or of purchases made. On either basis the distribution to each one will be the same.

"But when the tax factor is introduced, the situation is totally changed. If that profit is paid out as a dividend on the share capital that fact may be taken as proof that it is an ordinary trading concern. As such it will be required to pay income and excess profits taxes. What the members receive in dividend after those taxes are paid will certainly be taxable again as personal income in their hands if they are above the exemption limit. But if on the other hand those profits or gains from the identical trading are paid out as

patronage dividends upon past purchases the cooperative itself will certainly not be required to pay corporation income or excess profit taxes under current Canadian practice. I refer to the practice rather than to the law. In addition thereto, the members will be allowed to treat patronage dividends paid upon consumption goods as a reduction in their cost and therefore totally free of tax because such dividends are not to be defined as income for tax purposes.

"How the members of the cooperative elect to distribute those trading profits ought to be left to themselves to decide. But surely it is profoundly improper that a private decision of that kind should be allowed to govern their public obligations. It is good logic as well as good law that it is the source and not the destination which determines whether profits or gains exist. The liability to tax must depend upon the existence of profit and not upon the particular method of using that profit.

"Who would remain taxable if all taxpayers were allowed the same right to determine their own tax status?

"The third argument, namely that the whole of the profit or gain of the cooperative venture trading upon its own account is attributable solely and exclusively to the patronage of its members is also fallacious. In fact the profit or gain of any such cooperative is determined by the same factors as determine the profit or gain of any private and individual venture or of any limited company trading in the same circumstances. There is the same need for skilled and intelligent coordination of the various parts of the business commonly described as good management or else profit will not be produced in even the most favourable environment.

"With a management of an equal skill, the gross profit or gain before deducting taxes is not the sole fruit of any one of the several factors involved in the business to the arbitrary exclusion of all the others. It is instead a joint product of

(a) the past contributions of resources to form the corpus of property with which the cooperative trades, whether subscribed as share capital, or deducted from the selling value of goods sold for members, or accumulated out of trading profits,

(b) the direct labour which is used,

(c) the customers who patronise the organization whether or not they are members of it, and

(d) the public facilities which are available - railway transportation, telephone, telegraph and postal communications, the opportunity to buy necessary equipment and supplies from others, etc., etc.; in short, the advantage of participating in a developed exchange society.

How those profits or gains will be divided between the several factors is another question. If those who put up the original capital can be persuaded, or cajoled, into foregoing any return upon it there is more left to pay to others. The same is true if the wages of hired labour can be depressed without reducing its productivity to an equal degree. But it should be clear that this is a matter of bargaining between the several factors, it is not that the whole profit or gain is due to the presence of the one with strongest bargaining power which manages to walk off with the lion's share of the joint product of the cooperation of all of them.

"Applying this argument directly to cooperatives,

all of these factors enter into their operations. To assert as some of the less discerning cooperators do, that the whole productivity of a cooperative is to be attributed to its patrons alone to the exclusion of all the other factors, is most convincing evidence of their enthusiasm for the cause; but as argument it is deplorable.

"This argument rests upon a peculiar mental blind spot. Those who make it are so lost in contemplation of the virtues of their own movement that they are unable to see the grand outlines of the great society of which they form so small a part. We all of us live in mutual interdependence. We each specialize in his own small line and then exchange products through the market with others who are all doing likewise. True, it is not perfect. It suffers partial breakdown in business depression, and, internationally, in war; but its productivity at the lowest point is so much greater than the happiest possible results of self-sufficiency that we never think seriously of reverting to that latter state.

"Where would the consumers' cooperative be if it were cut off from the supplies of goods produced outside the movement, without the benefit of railway, telegraph and telephone service, without the services of lawyers and accountants who were not in full time employment?"

MR. PARKER: Hear, hear.

"The same question may be asked of the producers' cooperative. Would the wheat pools of the west cut timber and process it into lumber, and operate steel mills to get nails and roofing for their elevators? The question need only be put to answer itself. 'Cooperation' in the narrow and specialized sense of the word is largely an

inflation of the ego based on ignorance of how the world runs.

"The final argument namely that members of producers' cooperatives stand upon a footing of full equality with other taxpayers because they are liable to personal income tax upon the patronage dividends they receive deserves to be examined with some care. Let us suppose that a shareholder of a private company and a member of a producers' cooperative be chosen who are completely identical in their incomes and in their responsibilities before the receipt of dividends on their shares and from their cooperative respectively. Each is assumed to have \$5000 of earned income, to be married with two dependent children and to have \$1000 as his proportionate share of the corporate earning power before corporate income and excess profits tax. Their relative position will then be as follows:-

A

"(1) income of the corporation before taxation, applicable to the interest of the shareholder	\$1000	
	<div>Corporate Tax</div> <div>MinimumMaximum</div>	
(2) less corporate income and excess profits taxes	300	800
(3) balance available to be paid to the shareholder	700	200
(4) personal income tax to be paid		
(a) if the whole of this balance is paid out in dividends	282	80
(b) if none of it is paid out in dividends	nil	nil

(Note: Subject to the provisions of section 13 (1) of the Income War Tax Act.

	Corporate Tax	
	Minimum	Maximum
(5) aggregate tax, corporate and personal, upon this \$1000 of corporate income		
(a) if the whole balance is paid out in dividends	582	880
(b) if no dividends are paid	300	800

B

(1) Income of the producers' co-operative before taxation applicable to the interest of the chosen member	\$1000
(2) Less corporate income and excess profits taxes	nil
(3) Balance available for distribution to the member	1000
(4) personal income tax to be paid	
(a) if the whole of this balance is paid out in patronage dividends	417
(b) if none of it is paid out in dividends	nil

"The relative advantages of the member of the cooperative over the shareholders of the company varies from \$165 to \$463 if the income is distributed; from \$300 to \$800 if it is not. As a percentage of the original earnings this is an advantage of from 16.5 to 80 per cent. Obviously this exact percentage range can apply only to one kind of personal income; but the less the income of the recipient, the greater will be the minimum advantage to the member of the cooperative. The burden of corporate income and excess profits taxes upon the interest of the shareholders is a constant amount. The personal income tax diminishes as income is reduced.

"At any level of income there is a gross discrimination in favour of the cooperative form; and it is cumulative in its consequences.

"Certain of the more ardent proponents of cooperatives envisage their growth until they are certainly the dominant and possibly the only surviving business form.

(Note: See, for example, J. R. Love (Ed.) Notes on Co-operation. (Edmonton: Co-op News Press, no date) has the following to offer at pages 5-6:

'Cooperatives must become the common denominator of producer and consumer groups - not the political government. The use of the political state to regulate an economic system is external and unnatural and, accordingly, dictatorial. Only an internal consumer-producer cooperative economy can be self-regulating and democratic.

'It is toward that ultimate economic system we cooperators strive - a democratic cooperative economy - an economy of freedom and abundance. An economy not only for the people but also of the people and by the people. An economy which will provide everyone with the three economic rights of ownership of productive property, employment and equitable incomes. With our natural resources and power production we need only develop still further the spirit of brotherhood and the necessary cooperative organizations. When mankind is willing to cooperate and when we learn how to organize cooperatively - then we will achieve the goal. This is the star that leads us on.'

It may be remarked that Mr. Love is by no means alone in his hopes for the dominance of the cooperative form; although not all of those holding that belief express it so rhapsodically.

The same idea appears in the testimony of the representatives of the cooperatives before the Royal Commission on Income Tax in 1919-20.)

It is, therefore desirable to examine the effects which might be expected to follow on a growth of this kind.

"So long as cooperatives take only a small proportion of the total trade, it may be possible to overlook them and to permit that part of the national income which they represent to escape its fair share of taxation. Particularly is this so if they carry the flavour of self-help by people who are, most of them, below the exemption limit in any case. This has been the case in Great Britain when the chief cooperatives are consumers' co-operatives which are diffuse in their effects."

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"But in Canada, the chief cooperatives are producers' organizations. The wheat pools have some 40 per cent of the total trade in grain and now have resources which would permit them to increase that figure immediately by the purchase of some of their competitors or more slowly by forcing them to the wall. Certain of the dairy cooperatives in the western provinces have nearly perfect monopoly control of the territories which they have marked out for themselves.

"Long before that point is reached, the tax system will have to be modified to reach this segment of the national trade. It is a situation which Professor Pigou envisaged in his article in the Economic Journal, and upon which his argument is worthy of careful attention. It is as follows:

"It is possible to imagine a type of cooperative society in which all the members should club together in a self-sufficing community, growing corn, making bread, making clothes, digging out coal and building houses, and sharing the proceeds of their joint work among themselves without any money payment whatever being made. Conceivably, the whole nation might organize itself into an immense mutual association on this pattern, with the result that, though its real income remained as it is now, there would be no money income at all. If this happened, it is evident that an income tax of the British type would no longer be an effective instrument for raising revenue. Its efficacy and its (relative) fairness depends upon the condition that those parts

of real income, which are omitted from its scope because they are not represented by, or easily convertible into, money income, constitute only a small part of the whole. If this condition ceases to be satisfied, the whole form and machinery of the tax may need to be modified.

Note: Op. cit. p. 160.

"In the eyes of the British Board of Inland Revenue, the answer to such a situation seems to be the substitution of a sales tax for the income tax, as witness the following reply of Mr. London to a question upon this very point:

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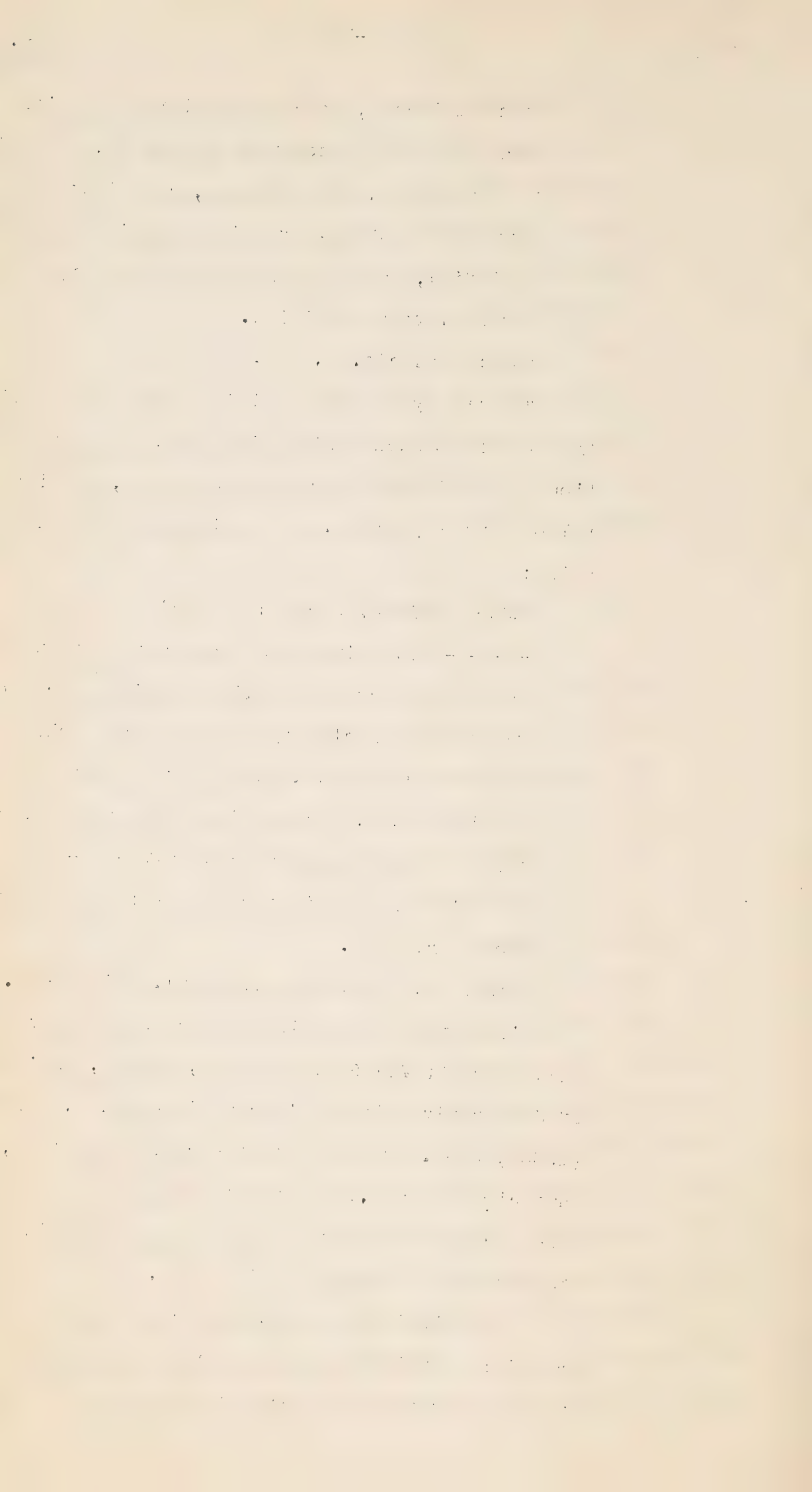
- - - - would it not be the fact that supposing the whole work of the distribution of commodities was to be effected by cooperative machinery, the Inland Revenue would be very much alarmed at the result, and would have to look elsewhere for the revenue of the country? - - -

"The remedy is very simple; have a tax on turnover, then.

Note: . (Cmd. 288 (1919-20). Evidence p. 967.)

"The problem has also been considered by Mr. D. H. MacGregor (Of All Souls College, Oxford, in 'Taxation of Cooperative Dividend' Economic Journal, XXXIII (1933), 52-3.) who came to the conclusion that, under that circumstance, the answer was either a sales tax or else a corporate income tax upon the whole income before the payment of patronage dividends.

"Even if it be denied that cooperatives make profit or gain; even if it be accepted that patronage dividends are a return of an over-charge (neither of which can be



logically supported); it would still be necessary to levy taxes upon them if they became the major form through which business is carried on. No matter what attempts are made to maintain their present tax-free position, it will, in the end, be destroyed by the growth of cooperatives to take advantage of it.

"Finally, the theory under which income taxes were imposed was that they were taxes which could not be shifted. Men tried to earn as large an income as possible. If part of that income were taken from them in taxation they might grumble; but they could do nothing about it.

"Whatever may have been the truth in that assumption when tax rates were low, it is clearly untrue now. As the data in Exhibit A show, corporate income and excess profits taxes of all corporations in Canada are now much larger than the balance for the owners of business. I say in the footnote:

"Corporate income tax is in form a tax upon corporations; in fact it is a tax upon doing business because of the predominance of corporations. The excess profits tax is in form and in fact a tax upon business as such whether done by an individual proprietorship, by a partnership, or by a corporation.

They, being the corporation and income taxes, are so large that they cannot be neglected. On any long-run analysis a return to capital is a necessary cost of production. Prices must therefore be set at such a level that they will cover all taxes and still leave profit upon capital. Therefore the cooperatives which sell at current market prices and which pay no tax upon income are the

beneficiaries of an especially favourable situation. Their trading profits or gains are increased because of the price policies which their competitors are compelled to follow; and they presently pay no tax upon those gains. The existing unequal incidence of this tax is more than a means of holding down those who are subject to it, of preventing them from accumulating the funds out of which they can finance growth; it is also the means whereby their competitors are built up by unusually large and totally tax-free earnings.

"If this situation were now to be reviewed with an eye to undermining the tax base, it would be left exactly as it stands.

Chapter V

The Canons of Taxation

"The problem before your honourable Commission is a problem in taxation, and it may be of service to consider the canons of taxation as they have been developed by other students and to apply them to the case before you.

"No matter whether one goes to Adam Smith writing a century and a half ago, or to Bastable writing in the present century, or to any responsible officer currently charged with the raising of revenue, one gets the same answer to the question of what is the first canon of taxation. With one voice they all say that taxes must be productive. A good tax system must find revenues adequate to the service of the state. No matter what else may be said of any system, if it falls down in that respect, it is a failure.

"We live in a great exchange society in which men sell their production for money and satisfy their needs

by spending that money to buy the goods produced by others. If the state which issues the money used in that process can balance its accounts only by a continuous increase in its debt and (when investors grow resistant to that) by the uncontrolled expansion of the currency, the whole society is heading for total disorganization.

(Note: There is a relatively modern qualification to this general statement to the effect that the balancing of receipts and expenditure ought not to take place in every year but over a period of years equal to one business cycle. The assumption is that in prosperous times collections should greatly exceed expenditures; conversely, in periods of depression, expenditures by government should be in excess of current collections. Only in this way can governments compensate for variations in private expenditure, greatly expanding their outlay when business spending is low and restraining the boom by heavy tax collections when business spending is high. But even those who hold to this variant of the general theory do not argue that, over long periods, governments ought to have a steadily expanding debt. While the evil consequences of uncontrollable debt expansion may long be delayed they are in the end completely certain.)

"Upon this test the Dominion's taxation system is definitely weak. At March 31, 1922, the Dominion of Canada (including Canadian National Railways) had a total debt of \$3520 millions. By March 31, 1938, that had risen to \$4855 millions, an increase of \$1335 millions or 38 per cent.

(Note: Royal Commission on Dominion-Provincial

Relations, Comparative Statements of Public

Finance (Ottawa: The King's Printer, 1939), p.10-12.)

If the accounts of the Dominion alone are used, the net debt at March 31, 1922, was \$2422 millions; at March 31, 1939, \$3153 millions, an increase of \$731 millions, or 30 per cent. (Canada Year Book, 1942, p. 776).

No matter what the basis chosen, the Canadian tax system was demonstrably a weak system under the conditions of the inter-war period.

"It will be recognized that during the present war this country has already passed legislation calling for a level of expenditure, in the peace which is coming, in excess of anything known before 1939, altogether apart from the increased amount of interest upon the public debt.

"(Note: Total debt charges in the nine months to December 31, 1944, amounted to \$249.3 millions, or at the rate of \$332.4 millions per year. In the fiscal year to March 31, 1939, interest on the public debt amounted to \$128.0 millions and cost of loan flotations to \$4.9 millions. Canada Year Book, 1941, p. 749, and Monthly Review of Business Statistics, January, 1945, p.38.)

Other legislation entailing heavy charges has certainly been promised and may also be passed. It is therefore clear that tax collections must rise to new high peace-time levels both in absolute amount and as a percentage of the national income. Therefore it is unwise to count upon the surrender of any dependable source of taxation in the post-war period no matter how good the arguments for so doing may be, abstractly considered. The need for revenue will make it essential to retain any pro-

productive tax.

"There are, no doubt, many strong arguments against the corporate income tax. It is certainly unjust in its present form, for shareholders are given no allowance for the fact that tax has already been paid upon the income which they receive as dividends.

"It is probably unwise. Those corporations which prosper pay tax at a very high rate upon their incomes; those which ultimately fail, losing substantial parts of the capital entrusted to them, still pay tax if in any year they make taxable profits. There is therefore a marked tendency to penalize fluctuating income. As a result there is a constant and powerful pressure upon business men to contract, not to risk funds on new ventures, to play safe, which in the long run has a seriously depressing effect on the national income. But after all that is said, the bitter fact remains that the corporate income tax (though not, it may be hoped, the excess profits tax) will be retained because of the revenue it produces and despite its effect upon the national income. It is no answer to the present problem to say that all taxes ought to be levied against income in the hands of individuals. That position has been rendered totally untenable by the scale of public expenditure already provided for by statute.

"In any case I assume that this Commission is proceeding upon the assumption that no material change will be made in the corporation income tax in the immediately foreseeable future.

"For these reasons, the question whether cooperative companies should or should not submit to the same taxation as other companies must be met squarely. It cannot be

avoided by recommending the abolition of all taxes on corporate income.

"The second canon of taxation is that taxes ought to interfere as little as possible with the production of wealth. One of the clearest public recognitions of that principle is made by the British Royal Commission on the Income Tax which in summing up, said:

"In considering which decisions we have borne in mind the undesirability of restricting commercial activities or of suggesting anything that might tend to diminish that national prosperity on which the success of the tax primarily depends. (Note; Cmd. 615 (London: H. M. Stationery Office, 1920), para. 648.)"

In this, they merely restate accepted opinion and acknowledge the dictates of common sense. It is too much to expect that the imposition of a tax will lead to any great increase in the production of wealth, but it is certainly desirable that it should have the least adverse effects possible.

"It is a logical corollary from this second principle that all tax legislation should give every form of organization an equal opportunity to grow and to develop. Corporations with share capital have been one of the chief forms for the raising and accumulation of capital in the past. Cooperative corporations with differing methods for raising money and different methods of distributing their trading profits are now rapidly developing. Each ought to be accorded an equal opportunity to do any lawful business. Neither one should be favoured as against the other, nor against the earlier forms of enterprise, the individual proprietorship and the partnership, nor against any other

form, at present unthought of, which may develop in the future.

"The third canon of taxation to which appeal is generally made is that of ability to pay. Simply stated, that means that of two taxes of equal productivity that one is to be preferred which rests on those best able to bear it. Now it is certain that there are cooperative corporations in this country which are very well able to bear taxation. On the other hand there are at all times some private corporations whose incapacity to bear it is equally clear.

"This principle must be interpreted in the light of all the relevant circumstances. Exemption from some part of the total tax burden may be given even to those in moderately comfortable circumstances if the total tax burden is light. But in a community like our own in which the percentage of the national income which is taken by the state is so very large, it must be accepted that those able to pay must include practically the whole community. Arguments for exemption which would have been accepted without question when public expenditures were at a very low percentage of the national income must now be unhesitatingly rejected.

"Any claim for exemption must rest upon the poverty of those who are to be exempt. It cannot be made for a whole class without exception. If the matter before you were one of the personal income tax it would be proper to recommend exemption of incomes below a certain limit. In the special case of farmers it would be proper to recommend special provisions for the computation of their incomes which would allow for the special nature of farm operations. But it would be

profoundly improper to recommend exemption to farmers as a class upon their personal income; and still more improper to suggest that corporations whose shareholders were farmers should be exempt upon that ground. All other corporations are liable to corporate income and excess profits taxes at uniform rates regardless of the relative wealth of their shareholders. To relieve corporations with farmer shareholders of taxation because some farmers are not wealthy, would be a wholly arbitrary procedure.

"At this point I refer to an article by Mr. Henry C. Simons entitled 'Some Reflections on Syndicalism', to be found in the Journal of Political Economy, L 11 (1944), pp. 1-25. This is peculiarly germane to my whole position. I have copies here and if I am allowed to do so, I should like to tender them:

"It might, perhaps, not be necessary to put quite so much stress upon this aspect, if it were not for current indications that farmers as a class are failing to file personal income tax returns as evidenced by the following report:

"'Along with the 1943 record the department pointed out that in addition to the 24,153 farmers who paid income tax another 37,560 farmers filed returns but claimed exemption releasing them from tax liability. On inspection it may be that some of these will be brought into the taxpaying group. Together those figures demonstrate that about 60,000 farmers are now being reached by the income tax machinery. Ottawa's belief is that between 220,000 and 330,000 farm income tax returns should be made. This suggests that the taxmen are reaching

between 18 per cent and 27 per cent of that number. (Financial Post (Toronto), March 17, 1945, p.1.)'

"In support of this report I attach Exhibit B hereto. It contains

"(a) The official press release on which this report was based.

"(b) a statement showing the tax status of agrarians in the years 1936-7 to 1942-3.

"(c) statements showing the change in farm income since 1936.

"All data are obtained from official sources.

"This report and the data in the exhibit should be read in conjunction with the arguments made before this Commission that past avoidance of taxation by cooperatives generally and especially by farmer-owned producer cooperatives should be reported by you to have^{been}/right and proper and that they should continue to enjoy freedom from corporate income and excess profits taxes into the indefinite future.

"The fourth major canon of taxation is that taxation should be just as between the various taxpayers. That principle requires that liability to tax shall be determined by objective tests. Many of the cooperatives appearing before this commission appear to rest their case upon the assumption that, since they are discharging important social functions, they ought to be excused from payment of the taxes to which others who engage in the same business are and should remain subject because the latter are not equally high-minded. (See, notably, the testimony of Messrs. J. T. Hull, E. B. Chown and W.C. Good.) It is not necessary to deal with this argument at length. The burden on inspectors of income tax is already heavy

enough in all conscience without asking them to accept the impossible task of measuring the motives and intentions, (and possibly of reassessing yearly the net value to society) of each taxpayer. For purely administrative reasons if for no other, objective tests have to be found to measure the liability to tax. Any other basis would amount to setting up a state-subsidized religion in which the orthodox would draw their rewards here and now and leave heaven to look after itself.

Nor is this a question of administrative convenience only. This has been a free country; it can remain so only if the executive is compelled to operate within a legal framework which is clear and definite. It must always be possible for the ordinary citizen to call it to account if it transgresses the law which it is empowered to administer. Such a challenge to the executive can be effectively made only if the citizen has the economic resources to meet its costs; has them, not upon sufferance of the state, but indefeasibly, under broad and binding rules set out in the statutes and in established precedents. That economic basis of freedom would disappear if the citizen could not enter any trade or business in any legal form, or if he carried on business upon the sufferance of an unrestrained executive power, or if the taxing power were used punitively against some for the encouragement of others, who, for some reason or for no reason at all, were the current favourites of the executive.

"Even from the narrower standpoint of smooth and rapid tax collection it is essential that taxes be just and be justly administered. The total burden of taxation presses very heavily now and will continue to do so after

the war. It must have the substantial agreement of the whole community if it is to be collected without intolerable strain. It is of the first importance that whole sections of the community shall not be made to feel, with reason, that the necessities of the state are being used as a stalking horse to encompass their destruction.

"Furthermore, differential taxation as between corporations carrying on the same kind of business which is based on differences in corporate form only and not on the nature of the business done is not only unfair as between the respective tax-payers, it is also profoundly unwise from the standpoint of society. The economic resources of the community are ultimately distributed by the price system. Those who are able to make trading profits get control of larger amounts of resources while those who are not able to use resources profitably are compelled to give them up and may ultimately be pushed out of business altogether. It is for this reason that the present exemption of cooperatives from taxation is unwise. They are set in a specially favoured position and are not compelled by an equal competition to justify the efficiency with which they use their growing resources. They may expand into fields of endeavour in which their net productivity is lower than that of their competitors merely because of this tax advantage. The total net product of their competitors is divided between them and the state. That of the cooperatives is, all of it, left with them, untaxed.

"This is of major importance. Exhibit B, which is attached hereto, shows from the official statistics that the share of the state at 1943 was much larger than that of the shareholders, both preferred and common. There

is every reason to believe that that is still the case.

"Therefore, cooperatives under current conditions, may show a very much higher private earning power than their competitors and have much larger funds for expansion at their command, even though their productivity is markedly lower. Should such be the case then the community will be worse off, altogether apart from the tax collections which are lost, because it will have lost the production which it would have had if those resources had been more effectively used. Upon the narrowest of economic grounds tax exemptions are undesirable because, ultimately, they so distort the distribution of economic resources as to reduce the national income below what it would otherwise have been.

"Upon this same line of reasoning, the producer cooperatives should not be encouraged by a recast section 4(p) to confine their dealings to their own membership only nor to attempt to serve only the smaller and less prosperous farm operators. An elevator system has high fixed costs and low variable costs. Therefore average handling costs decrease substantially with increases in the amount of grain handled. If a farmer-owned system is to be in existence at all it should have every incentive to go out and get all the business it can so that its resources shall be used most effectively and also, so that it shall put the maximum of continuous competitive pressure upon its competitors. The latter have no claim to anything but an equal chance to fight for their economic lives. They have no claim to any special protection. Their shareholders must be presumed to have invested their money with their eyes open, and to have accepted the possibility that their capital may be lost. But, equally,

in a state-regulated industry, they shall not be pillaged by the granting of tax advantages to competitors whose major difference in position from their own lies in the length of the shareholders' list or in the identity of the persons whose names are on those lists.

Chapter VI

Summary and Conclusion

"It may be of help if the argument contained above is summarized briefly as follows:

"1. that the doctrine of mutuality under which co-operatives now claim tax exemption is one which it is very difficult to harmonize with the facts of the insurance business concerning which it arose; and one which it is quite impossible to apply logically to other types of business.

"2. That even if that doctrine be accepted in Great Britain where there is a personal income tax only, it is perfectly clear that it cannot be used as a basis for tax-exemption in this country in which there is a corporate income tax.

"3. Cooperatives are incorporated legal persons with limited liability and perpetual succession and which trade in their own names. They make profits or gains from that trading. When those trading results are known the co-operative decides through its directors when, how, and in what proportion those gains from trade shall be divided. This is, in its entirety, the performance of a legal entity entirely separate and distinct from those who are members of it.

"If there is a tax upon the earnings of corporations as such, then cooperatives should be subject to it.

"4. That all taxes on business firms are in the long

run costs of doing business regardless of the particular method of assessment. Therefore, to permit cooperatives to escape from costs so heavy as the income and excess profits taxes now are (and give promise of remaining for a long period after this war) is a gross discrimination against those now assessed. It tends to destroy the tax base, and leads to the uneconomic employment of the nation's resources.

"Most important of all, the effect of this discrimination is cumulative.

"The existing situation is totally indefensible, whether on grounds of abstract logic or of public policy. Exemption from taxation is not necessary to the cooperative movement because, given good management, there is no reason why a cooperative should not be as profitable as any other commercial venture. It is contrary to the whole trend of cooperative thought which has always been against accepting bounties from the state as striking at the very roots of its independence.

"The cooperative movement has behind it a century of growth in wealth and in power; but its great contribution has been in the democratic system of its internal government and in the conscious attempt to distribute trading profits broadly. What a curious thing it is that so many of the professed inheritors of the proud tradition of the Rochdale pioneers should be, in this country, capitalists with resources far greater than those pioneers ever dared to dream of, and who hope, 'by altering their language', (Last v London Assurance Corporation, 10 Appeal Cases (1885). The words are Lord Bramwell's.) to escape from the taxes upon their profits, taxes which their fellow-citizens bear without complaint as necessary costs of maintaining the government to which we are all

[illegible]

1. *Chlorophyll a* (Chl *a*)

subject and in whose benefits we all share.

"All of which is humbly and respectfully submitted."

Whereupon the Commission adjourned at 12.30 p.m. until
2.15 p.m.

AFTERNOON SESSION

The Commission resumed at 2.15 p.m.

BY MR. PARKER:

Q. Professor McDougall, I understand from your brief that it was prepared at the request of the Line elevators?

A. Yes, sir.

Q. Your brief was prepared, then, I assume, having in mind the best and most logical arguments that could be fairly produced in support of the position which the line elevators have taken before this Commission?

A. No, it was not, sir. This was a report as a citizen. It was something which they asked to have done, but beyond that it was not done in any sense in relation to their position.

Q. It is not to be treated in any sense as a piece of advocacy on behalf of the contentions made by the line elevators? A. No, sir.

Q. And in the preparation of your brief I judge that, inasmuch as you mention that in approaching the problem one would naturally look to the wheat pools for information, it would be only natural to suppose that you had approached it primarily with that in view, the position of the wheat pools. Would that be correct? A. That would be so only because they are the largest and the most fully-developed, and therefore you see in them --

Q. I just asked you that question? A. Yes.

Q. You say they are the largest and the most fully-developed, and I think you also used another adjective as well; that they were the oldest? A. I may have; I cannot remember.

Q. As a matter of fact there are very large cooperatives

in this country which are much older than the wheat pools, are there not, to your knowledge? A. Not to my knowledge.

Q. Did you ever hear of the British-Canadian Cooperative Society or association, I am not sure of the exact terminology? A. That is the consumer cooperative in Sydney, is it?

Q. I merely asked if you had heard of that? A. Yes, I have.

Q. Do you know whether it is a producer or consumer cooperative? A. It is a consumer cooperative.

Q. And have you knowledge that it is very much older than the pools? A. I think 1906 is the earliest date.

Q. And its form was more like the English cooperatives, as they have developed, than the pools? A. Yes; it is a consumer cooperative, as they were and are.

Q. I was wondering why you did not base your argument at least in part upon the history and from the set-up and method of operation of such organizations as that, and other cooperative organizations? A. Because in size they are much less important.

Q. That is, you consider the wheat pools far more important than all the rest of the cooperatives in this country put together? A. Certainly far more important than all the consumer cooperatives put together.

Q. And the producers? A. Yes, I would think that is so.

Q. Then another thing, if I follow your brief correctly, is this. In one place you state that the fact that these cooperatives are incorporated, that they have established what we have been calling a legal entity, quite apart from their members was, I think, to use your expression, crucial

in arriving at a proper understanding of this whole question?

A. Yes. That word "crucial" was used in relation to the corporate income tax.

Q. I was wondering if the argument which you make in that connection would be sound, if you would consider it sound, if those people, instead of becoming a corporate entity, a separate legal entity, gathered themselves together, in, what shall I say, a sort of loose association, but not incorporated? Would your arguments apply in the same way as you have sought to apply them in your brief? A. Do you think in terms of a partnership?

Q. I am thinking in terms of the question I put to you.

A. I have no knowledge of any organization in which people are banded together except in corporations, which will take in so many people. I would ask you, therefore, to be precise.

Q. Did you ever hear of a concern in this country called, I think, the United Maritime Fishermen, a body which came before this commission in the maritime provinces?

A. No, sir; I have not heard of them.

Q. And you have not heard of any body of persons, shall I say, gathered together in what they call cooperative association, other than being incorporated by a charter into this thing which you refer to as a legal entity?

A. I have heard of a cooperative union, which is a body which represents incorporated cooperatives.

Q. But you have not heard of any of the others?

A. Of a trading organization which does not take the corporate form? No.

Q. You have not heard of associations of the type which I have described? A. I think I say that I cannot know everything about all of them.

Q. Is that quite what I asked you, whether you knew everything about all of them? A. This is one that slipped through the mesh.

Q. I asked if you had ever heard of the type I have mentioned? A. No, I have not.

Q. I think you argued some length in your brief that in order to answer this very difficult question of what may or may not constitute profits, it does not depend upon the destination of those so-called profits if they are profits? A. Yes, sir.

Q. But rather that in order to ascertain whether such things as profits do in fact exist, one must look to their origin. Is that correct? A. Yes, sir.

Q. And that is definitely true, is it, in your opinion? A. Yes.

Q. Will you turn to page 21, I think it is, of your brief, at the beginning of the paragraph about the fifth line down, where you say:

"But when the tax factor is introduced the situation is totally changed."

That is, the situation you have been previously discussing. Then you add:

"If that profit is paid out as a dividend on the share capital, that fact may be taken as proof that it is an ordinary trading concern."

It has occurred to me that this might be perhaps contradictory, in part, with your general thesis. Do you think it is?

A. No, I do not think so, sir. What was in mind there was this. I understand it to be the ruling of the inspector of income tax that a corporation which pays dividends upon its share capital is in danger of losing the protection of section 4(p).

Q. I do not associate this statement or argument you are making here with section 4(p). I thought you were talking about the actual situation, quite irrespective of section 4(p), were you not? A. The whole virtue and beauty of being a cooperative is the shelter of section 4(p). Why bother, if you do not get it?

Q. I was probably wrong, but I thought your whole argument was founded upon, and proceeded upon the contention that these corporate bodies, because of the way in which they were organized and the method in which they carried on business, actually earned a profit; that it was not a question of whether that profit was to be exempt from taxation or not. That may be a sound public policy, or it may not, but let us try to establish first if they have profits. A. Yes, I say they have.

Q. You say they have, and you say again that the question of whether or not they have profits is determined by how they dispose of their funds, rather than the origin.

A. It is determined by the source of their funds, not by the method of their disposition.

Q. That is so; I had it reversed. Yet I say I thought it was inconsistent there, when you say that if that profit is paid out as a dividend on the share capital, that fact may be taken as proof that it is an ordinary trading concern. I thought that was inconsistent with your argument?

A. To me it is a matter of indifference whether that trading profit is paid out upon the share capital or whether it is paid out to the patrons in proportion to their contribution to the business of the concern. It is still a trading profit.

Q. Now will you direct your attention for a moment to page 11, just for clarification. This is a question which has been bothering me; perhaps I am the only one it

bothers, but it has come up a number of times and I should like to have it clarified. Just let me read it:

"For present purposes, the most important difference is that the Canadian Income Tax system has always levied a tax upon the income of corporations as well as that on individuals."

Then you go on:

"As a result, the income of corporations is taxed twice; once when it is received by the corporation, and again when that part of it which is not absorbed by the corporation tax is paid out in dividends to the shareholders."

I suggest to you that this is unsound, and by that I mean this. It is quite erroneous to say that the income of a corporation is taxed twice under our system.

A. The income is taxed twice which arises out of the one corporate act of making a profit. It is first hit in the hands of the corporation. It is hit again when it is paid out as a dividend.

Q. When I earn a fee as a practising solicitor, I have to pay income tax on it. When I buy a suit of clothes and pay part of that fee to my tailor, he has to pay some of that same money in income tax, but I would not call that double taxation, would you? A. Exactly not, because there are two separate acts of production. There is the production of what service you give as a lawyer; there is the production of what service the tailor gives as a tailor, but there is not a separate act of production in the other case.

Q. There are two very separate and distinct taxpayers, however? A. Two separate and distinct taxpayers upon the one income.

Q. No; that is where I suggest you go wrong, and may I point out what I mean. When an ordinary corporation, carrying on business, earns an income, it is the income of the corporation both in fact and in law, is it not?

A. Yes.

Q. And as such, and as a taxpayer having earned income, it pays its tax and that transaction is completed, is it not?

A. Yes.

Q. At that stage that income does not belong to the individual members of the corporation, does it?

A. Quite right; it is earnings made upon their economic activity.

Q. Up until the time, and prior to the time the company may declare dividends, that income in the hands of the corporation is not the income or the property or the money of the individual members of the association, is it?

A. No.

Q. But once dividends are declared and paid and that balance of the money has become transferred from the corporation, whose money it was, to the shareholders, it then becomes the income of the shareholders and it ceases to be the income of the corporation. I say it is very much like the illustration I put to you. I pay income tax when my income is in my hands; when I pass it over to somebody else, it becomes income in his hands, and it will be taxed accordingly.

Do you see my point? A. I see your point.

Q. Are you willing to agree, then, that it is, I think to use your own words, a fallacious piece of logic, and that it is a misstatement of fact to say that the income of corporations is taxed twice, once when it is received by the corporation and again when that part of it is paid to the shareholders? I submit that is simply not so. Do you

agree? A. I think you are wrong, totally.

Q. Well, it is no harm to suggest to you that you may be wrong?

A. Well, so long as you will remember that in the example you gave there were two separate acts of production; there was the production which you made as a lawyer and there was the production which the tailor made as a tailor. That is not true in the other case.

Q. This is the first time I ever heard anybody admit that the lawyer produces anything. A. You and I are in the same boat; that is why I say that.

Q. Perhaps you should clarify this for me, if you will; it has come up many times. Just what is the meaning of this expression, "double taxation"? May I put my idea before you first, and then you may qualify or clarify it. My understanding has always been that double taxation meant this: two taxes imposed by the same authority upon the same taxpayer in respect of the same sum of money. That is what I understand to be double taxation; and any form of taxation which does not meet those requirements is inaccurately called double taxation in fact. In the language of economists it might mean something else, but as an actual fact it seems to me that is what double taxation is and can only be?

A. It seems you and I are making the same point, that the corporation and its shareholders or members or cooperators, whatever you call them, are two different legal entities, and I agree with you. But the act of production of a shareholder is the contribution of capital to the corporation. For that act of production he receives his dividends; and if you tax what is available to be received once in the hands of the corporation and again in his hands, when he receives it as a dividend, it is, on any reasonable ground,

double taxation.

BY THE CHAIRMAN:

Q. But has not that fund of money changed when it gets into his hands. It is his money then? A. Yes.

Q. It is another fund. It has left the corporation entirely? A. It is another taxpayer, but it is the same source of earnings.

Q. Yes, but it is another taxpayer and really another fund. Once the shareholder gets it, it is his; it no longer belongs to the corporation? A. Quite.

Q. Therefore are there not two separate forms of taxation? I am not an economist; I must admit. A. Frankly, sir, I think it is arguable. I do not agree.

BY MR. PARKER:

Q. Well, that is making some headway, if it is admitted to be even arguable. You rule out my illustration, as not being analogous? A. I am accepting it perfectly; I agree with you.

Q. If there was only one production? A. Yes.

Q. Is there not double production, in the sense in which you have used it, in the corporation and the shareholder?

A. No.

Q. Why? A. The act of trade takes place, and the corporation is not able to go out and buy a suit of clothes or order a dinner. It is a fictitious person, operating with the money of the shareholder, and pays to the shareholders such earnings as it is able to make, when it is able to make them.

Q. That leads me to another question. You say a corporation is a fictitious person. In so far as the law is concerned, and in so far as the taxpayer is concerned, it is just as real as you or I? A. Yes.

Q. Then why call it a fictitious person?

A. Because it cannot consume.

Q. I think I have heard the expression used that it cannot actually bear the burden of the tax, although it can pay it. Would that be putting the same thing in another way?

A. Yes; the corporation as such cannot enjoy what it earns.

Q. Unless it enjoys paying it out?

BY MR. ELLIOTT:

Q. May I intervene for a moment? Speaking of tax matters -- you will check me if you do not agree -- one can refer to the object of a tax; that is to say, the thing according to which the amount of the tax is computed? A. Yes.

Q. It may be on income, or on so many yards of cloth of a given fineness, or the value of real estate, or something else. In the second place there is the taxpayer;

that is to say, the person, whether natural individual, or a legal fiction, which actually pays the tax, and all that is necessary there is that the payer must have the power to write out the cheque to pay, and to be sued in case he does not pay. Again, there may be a question of who bears the burden of a tax. What do you understand by that, the person who bears the burden of the tax, as distinguished from the taxpayer?

A. In this particular case the person who bears the burden of the tax is the shareholder.

Q. And you told Mr. Parker that you do not consider that a corporation can bear the burden of it, because it cannot enjoy things and feel burdens? A. Yes.

MR. PARKER: And cannot suffer deprivation, either.

BY MR. ELLIOTT:

Q. Finally there is another point which you introduce

into your argument, and that is the source of the tax; that is to say, where the funds come from? A. Yes.

MR. ELLIOTT: Perhaps if we kept those four ideas distinct, it might help.

BY MR. PARKER:

Q. Just one or two other questions on that section of your brief which you did not read. You deal with the doctrine of mutuality, beginning on page 11, and as I understand it you point to the fact that true mutuality had its origin in life insurance transactions? A. Yes.

Q. And that in attempting to carry that theory over, as it were, into the ordinary commercial field one has to be very careful? A. Yes.

Q. Lest they get on the wrong track? A. Yes.

Q. Do you draw any distinction there between the mutuality relating to life insurance and fire insurance?

A. There is a very small distinction, based upon the differing lengths of time over which the contract runs, but not otherwise.

Q. Are you familiar with the workings of the so-called mutual fire insurance companies of this country? A. To some extent, yes.

Q. Are you familiar with the group commonly referred to as to the American reciprocals? A. No, I did not manage to read that part of the proceedings of the Commission before coming here.

Q. You are not familiar with their set-up or operation? A. No.

Q. Then at page 11 you draw a simple illustration, as I attempted to do. You say that if B goes into a retail store and buys five pounds of sugar, he gives up forty cents and the store gives up the sugar, and the whole transaction

is closed? A. That is not on page 11, is it?

Q. No, it is page 3; I am sorry. Then you go on to say:

"This is true whether the store is owned by a private individual, by a limited company with share capital, or by a limited company with open membership trading as a cooperative."

What I want to bring to your attention there is this. Supposing in that transaction, when a man goes in for his five pounds of sugar, has the contract, which you simplify in your illustration, amended to this extent. The owner at that time owns the sugar. He is ready to sell it and he does sell it at an undetermined price. He passes out the five pounds of sugar and he collects 35 cents, and then he says to the purchaser, "At the end of the year, after I have made up my accounts and have paid my costs, I hope to be able to --". No, I will put it the other way around.

A. Yes, I think you had better.

Q. Supposing he charged the purchaser 45 cents, and told him that at the end of the year, after making up his accounts and paying his costs, he hoped to be able to rebate him five cents. Is that not a closed transaction?

Is that not a complete transaction as far as the contract goes? Is it not as complete as the case of the life insurance contract? A. It is closed at what point?

Q. What is the difference between that type of commercial sale and the insurance contract? A. I should say this, that in that case it is a closed transaction when the 45 cents and the sugar changed hands; and that what happens after that is a distribution of the profit earned on the trading venture.

Q. But you are disregarding one very fundamental

and vital term of the original contract, namely that if the store owner has something left over, after paying his costs, he will return something to the purchaser. A. Yes.

Q. That is a definite term of the contract. Are you ignoring that? A. No, I am not. I am saying that what is returned is a proportion of the profit.

BY MR. ELLIOTT:

Q. Here is another example. Supposing a farmer leases a farm on an agreement that if there is any profit he will pay so much of it to the proprietor. Is that payment which he makes to the proprietor, supposing there is a crop, part of the profits of the tenant? A. It is part of the profits of the venture, but that is not a parallel case to the one suggested by Mr. Parker, because in the crop lease it is a payment out of the gross proceeds, whereas what Mr. Parker is talking about is a payment out of net, after allowing for expenses which would include the salary of the manager of the business.

Q. And supposing the same situation occurred in the fishing industry, where a fisherman hired a man to fish for him at so much a day plus a certain percentage of the fish caught. Would the payment for the fish caught be considered part of his wage, or would it be considered part of the profits of the man who hired him? A. So far as that proportion of the catch is concerned, he is sharing in the profits of the venture, is he not? That is my opinion. I put it as that.

Q. So you would hold that the man who employed the fisherman ought to be taxed on the proceeds of the whole of the catch, with nothing whatever charged as wages in addition to what he paid the fisherman? A. He would have to make

up the statements and make a return to the income tax authorities showing the proportion which he had in the joint venture. My objection to wages was not the matter of paying wages to the man. It was the matter of taking the wages of the man who ran the store as being part of the cost.

Q. Would you consider that the man who hired the fisherman should deduct what he pays for the fish caught from his income tax statement? A. Oh, yes; and it would appear in the statement of the man hired.

BY MR. PARKER:

Q. Just one or two more questions, Professor McDougall. I realize that the brief is largely argument, but there are one or two statements which, unless we understand them, may lead to false conclusions. On page 5 you go on to say:

"There are substantial grounds for inviting the insurance policy holder to bear a part of the risk, there is no corresponding need in any ordinary commercial or manufacturing business to ask the customer to do so."

I do not quite understand why there should be any difference. Would you mind telling me what you mean there? A. Yes. Take the example of a man who buys a whole life policy at the age of twenty-one. The insurance company, with large resources is, for a fixed premium, binding itself to insure him against the whole term of his life, and on the actuarial table that runs to age ninety-six. Therefore at the point of insurance, for a fixed monthly payment the insurance company is accepting hazards which are very, very great indeed, and totally incalculable even in relation to a whole body of lives, and not to one life only.

Q. But wherein does the policyholder assume part of the risk? A. Well, you have them participating, and you also

set the premium far higher than any ordinary expectation of risk would lead you to do.

Q. You are talking about participating policies?

A. Yes.

Q. If that be so -- I am not quarrelling with it --why is there not a corresponding need in a commercial transaction to ask the customer to take part of the risk? A. Because it can be limited in time.

Q. What can be ; the risk? A. The transaction. In the case of the sugar, you buy sugar and you sell it, and it is all done in a month.

Q. Not if the monetary return is postponed for a year or two years? A. That is a matter of option; it is not a necessity.

Q. All right. Then you go on to say:

"It may be desirable that he should do so."

That is, that the customer should assume part of the risk.

"To take the specific example of grain-growing, it is most desirable that farmers should know as much as possible of the problems and of the costs of marketing the grain they grow. But this ranks as a piece of desirable adult education; it is not a necessity of the trade."

Do you say that farmers banded together in a cooperative society, with the desire to market their grain, do not require knowledge of marketing and all that goes with it? Do you not think it is rather weak to attempt to make that "desirable as a matter of adult education"? Is that not vital to the business? A. I think it highly important in a trade in which there is fluctuation from year to year in total crop and in the price at which that crop is sold, they should be as fully aware of the forces which are beyond their control and which

play upon them, as possible. I think that is most desirable.

Q. But look at the conclusion of your sentence:

"But this ranks as a piece of desirable adult education; it is not a necessity of the trade."

My question is, why is it not a necessity of the trade, if the farmers are carrying on the marketing business in their own behalf? A. Because the trade has taken place in the past without their owning part of the marketing machinery.

Q. Whoever carried it on had to have a knowledge of it?

A. Oh, yes; but it is not necessary that the farmers should know beyond the elevator, is it?

Q. It is not necessary that the farmer should carry on the business of marketing grain; but if he choses to do it, then it follows that his knowledge of what he is doing is very important and in fact vital, does it not?

A. It is vital that those whom he appoints as managers should have that knowledge. It is not vital that all individual farmers, shareholders in an elevator system or a pool, should have an equal amount of knowledge; and in fact I think you will admit that they do not.

Q. In the same sense that in an ordinary joint stock company carrying on the same business, the shareholders might not know the first thing about it. You mean it in the same sense? A. Yes.

BY MR. ELLIOTT:

Q. May I get this cleared up. What again, precisely, are the substantial grounds for inviting the insurance policyholder to bear a part of the risk? A. The duration of the risk and the unpredictability of that risk or of all the risks involved over the length of time which they will run.

Q. You think those uncertainties show up financially

in the case of a life insurance company? A. They show up partly in the variations in the death rate --

Q. But financially. I presume all risk, in a technical sense, has a financial aspect? A. Yes. It would show up in the extent to which your total earnings actually meet your legal reserves, or fall short of or exceed them.

Q. The fluctuations in net profits from year to year? A. Yes.

Q. On that basis are you suggesting that life insurance companies are more risky ventures than dealing in western live stock or grain? A. No, I am not; because in fact the expectation of life has been improving over the last forty years.

Q. I am speaking of the financial aspect. A. Well, your year to year variability, has obviously been far higher in relation to wheat and live stock, and therefore from that standpoint it has been a very much riskier business.

Q. And you think there are no grounds for inviting the farmer to bear some of that risk? A. Well, I looked at the experience of the contract pools, in which they actually did, and I took the testimony of those who participated in that and who seemed to believe that it was an impossibility to maintain.

Q. Perhaps after all it was not entirely the farmers who were at fault? A. It might be.

BY MR. PARKER:

Q. Just one other question. At page 7, where you are dealing with this much-discussed Styles case, you refer to it at pages 6, 7 and 8. At page 7 you speak of it in these words:

"Thirdly, the decision in the Styles case, which marks the high water mark in the extension of this

The first part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

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principle, is a blurred decision."

What do you mean by that? A. That it started off on one ground and, as far as I am able to determine from reading it, it ended up with another.

Q. That is what you mean by a blurred decision?

A. Yes.

Q. In other words that it is not a logical decision?

A. I say so, with deference; but I am not able to understand it.

Q. There is nothing presumptuous about that; I think we have often had the temerity to tell their lordships that they were wrong, but they do not always agree with us. What I am getting at is this. As I understand it, you quote certain comments, certain beliefs held by the commissioners of the board of inland revenue? A. Yes.

Q. In which in effect you agree with what that board said, rather than the House of Lords; that is, you are basing your argument on the views expressed by the commissioners, rather than on the decision itself?

A. Yes.

Q. And starting from there you build up your argument by thus overruling, as it were, the Styles case. Is that a fair way to put it? A. I say that the board which is charged with administration was itself unable to understand it, and I stand with them.

Q. Let us put it in this way, then. You do not go so far as to say that the Styles case is wrongly decided. You say that so far as you are concerned you do not know what it decides. Which is it? A. Wrongly in what sense? It is law, and that is the end of it.

Q. In the sense in which you use it in this argument?

A. Yes, I say it is wrong in its argument.

Q. And if you accepted the Styles case as being rightly decided, your argument and your conclusions would be different? A. Yes.

MR. PARKER: All right; that is all I have to ask you.

BY MR. ELLIOTT:

Q. I should like to get your views, Professor McDougall, on one or two points which have come up before the commission from time to time. On page 41 you touch on what seems to be a very fundamental point. You are there arguing that one of the considerations in judging the reasonableness of a tax is the way in which it will affect the use made of a country's resources; and you take the position, as I understand it, that if the tax will lead to a use of the resources which is not the optimum use, then so far it is a poor tax?

A. Yes.

Q. As compared with one which will have that effect?

A. Yes.

Q. You mention Professor Pigou a few times. Do you recall that in his Economics of Welfare he argues to the effect that even under perfect competition there will not necessarily result the optimum use of a country's resources, since he argues some industries confer benefits on the community for which they receive no pay, whereas other industries or other types of activity impose upon the community detriments for which they are not compelled to pay. Do you follow me so far? A. Yes.

Q. And that accordingly it would be reasonable to assist the industries which confer net unpaid-for benefits, and to deter in some fashion from expanding, as much as they otherwise would, those industries which impose unpaid-for detriments. What do you think of that position?

A. Provided the distribution of the bonuses and penalties is in the hands of people who are all-wise and all- virtuous, I would agree totally; but in the world in which we live I think it is totally non-applicable. They ought to have total foresight as well, I should have added.

Q. You consider that those conditions which Professor Pigou mentions may never exist? A. Yes, as an abstract possibility I admit that, yes.

Q. Do you admit that some industries do confer net unpaid for benefits for some activities of society? I have in mind education, for instance? A. You are entering into the doctrine of consumer surplus.

Q. No, I am not thinking of consumer surplus; I am thinking only of what I say. A. We are paid in our trade what we are currently worth, or what we think ourselves worth. If you go beyond that and say that we do something more --

Q. I do not know how it works out at Queen's, but in Alberta the government intervenes in connection with this sort of thing, in connection with assisting university authorities in making payments. In Alberta the university gets a subsidy from the government. I suspect that you do the same at Queen's? A. Yes.

Q. Do you think that that is altogether unreasonable or undesirable? A. No, I take it that the province thinks it gets its money's worth when it pays.

Q. And also thinks that in the absence of subsidy we would not get what we were worth? A. Yes, in all probability it would result in a different kind of university.

Q. Even under a perfectly competitive situation?
A. Yes, that is quite true.

Q. Do you think that the policy of subsidizing us is entirely unreasonable? A. No.

Q. Well why not, in view of the stand which you have just taken? A. Because this is the operation of a charitable trust. I speak of my own university.

Q. Yes. A. It is not a commercial and trading organization.

Q. I see. Let us put it this way: while there is enough honesty and foresight in the world that it may be safe to allow governments to subsidize charities and trusts, there is not enough honesty and foresight in the world to allow governments to go outside of that? A. Certainly not to go high, wide and handsome.

Q. In the latter case I agree with you.

BY THE CHAIRMAN:

Q. Is that not the paradox between merit and reward which has existed from time immemorial? A. Yes, I should think so, sir.

BY MR. ELLIOTT:

Q. Your position, then, is that there may be injustices which confer net advantages for which they do not get paid? A. Yes.

Q. And industries which confer, or activities which confer net detriments? A. Yes.

Q. And that ideally the first class of industries do not expand quite enough under conditions of perfect competition? A. Yes.

Q. Enough, that is to say, to make use of the reserve in the optimum, while the latter perhaps expand too much under perfect competition. But you think the situation would be much worse if you tried to do anything about it? A. Yes.

Q. Well, I think I have your idea now.

BY MR. VAUGHAN:

Q. What industries are valid? A. Well, the boot-legging industry is perfectly valid, but I would not like to argue that it is a public benefit.

Q. It is not a legitimate business? A. There are

businesses which are legitimate and which still have certain undesirable consequences, I should think. For instance, it was perfectly legitimate until about thirty-five years ago to make certain kinds of matches, which were very hard on the health of those who made them. You find that you finally get away from that.

BY MR. ELLIOTT:

Q. There is another point which, it seems to me, is not quite clear in your paper. Is it not true that what you might call the canon of justice or equality or equity in taxation is usually interpreted to include the ability to pay, or rather that the ability to pay is one of the possible tests of justice in taxation; is that not the usual position taken? A. It all depends upon which writer you strike to find how many canons there are. But, let us take the case of British India, where for a long time there has been a tax on salt. Obviously this is a tax upon a vital necessity of a people whose incomes are very low. But, if that is the only way in which you can raise revenue to maintain the central government --

Q. I am not arguing that, in taxation, justice is in any sense superior to adequacy, but rather I am asking you this: Is not the ability usually considered to be one of the possible tests of justice in taxation? A. Yes.

Q. And when you are speaking of justice or equity in taxation, do you consider that we should be concerned primarily with those who initially pay the tax, or with those who ultimately bear the burden of the tax? A. So far as possible, those who ultimately benefit.

Q. What considerations do you think it reasonable to take into account in determining a person's ability to pay

taxes? You said they must be objective. What are the more important ones you think it reasonable to take into consideration? A. Well, we now have a tax system which, so far as income tax is concerned, relies almost entirely upon the amount of money.

Q. Are there any others which you consider reasonable?

A. There are some which are reasonable, but which are administratively difficult.

Q. The number of children, for example? A. Yes, and whether a house is owned or whether it is not; and how much income is produced, let us say, by a man with an acre of garden. The British do attempt to reach that, but we do not. There are things of that kind which I think are administratively difficult. But, in logic, you ought to bring them in, if you can.

Q. And personal income tax takes away more from a larger proportion of the higher incomes; has that anything to do, in your opinion, with equity or justice in taxation, or ability to pay? A. I will go part way, although I do not think --

Q. I am not asking you to. A. I am deeply doubtful about the whole principle, and especially as to its practical results.

Q. Do you think it is based upon an attempt, shall we say, by the authorities to approximate ability to pay?

A. No, I think it is very much more upon the ease of collection than it is upon ability to pay.

Q. Having in mind what you have said about considering, so far as possible, those who ultimately bear the burden of a tax, on what basis would you consider that the fairness or equity of a tax on corporations should be; on what ground

should the fairness or equity of a tax on corporations be considered? A. I do not think that there is much sense in taking that approach at all. You tax a corporation, not because it is just, fair or wise, but because it is there.

Q. You think that the tax, so far as the corporation is concerned, is imposed primarily to secure revenue? A. Yes.

BY THE CHAIRMAN:

Q. That is, if a company makes a loss for three years, and then makes a profit, that is no reason to exempt them in the fourth year; is that what you say? They have to pay on the year in which they make a profit? A. Yes, that is current practice.

BY MR. ELLIOTT:

Q. Such a tax does, however, affect individuals. There is a real burden of such tax borne by somebody? A. Yes.

Q. And that real burden, presumably, ought to be taken into consideration in judging proposals for change? A. Yes, although you will understand that I am arguing that at the present time, with the present weight of corporation taxation, part of that real burden is expressed in the price to the consumer. I do not think it all falls upon the shareholder.

Q. I am coming to that. At page 30 of your brief you say:

"On any long-run analysis a return to capital is a necessary cost of production."

And then you go on to suggest that in the long run that heavy tax would have to be shifted somehow? A. Yes.

Q. What exact process do you envisage in shifting that tax? A. It is nearly impossible to follow it out with certainty, but I would say, first, that in so far as the efficiency of the business increases it would probably result

in a stable price level, and then enlarge by a little bit, or enlarge in roughly equal proportions to meet the share of the government and of the shareholder. They split it 50/50 now. You may have a case where there is a contraction in the total market, and therefore some people are forced out of trade altogether.

Q. What sort of people are most likely to be forced out?

A. The less efficient.

Q. Those who are making no profit? A. Those who are making no profit and whose cash has run out; it takes two things.

Q. Those who are making no profit, however, are not subject to the income and excess profit taxes? A. Correct; but it means that as soon as they do make anything the government steps in for its share.

Q. Yes. A. Therefore their chance of survival is definitely not improved.

Q. How do you expect them to be got out in that way?

A. How will they finally disappear, do you mean?

Q. Yes, those weaker competitors? A. Even a weak business very often will die very hard. First of all there will be a tendency to skimp on depreciation reserves, and then finally the plant is slightly obsolete, and then their cash runs down, due to some cash loss, and then the whole thing flows over. But it may take a very long time to do that.

Q. The application of the income and excess profits taxes is now very broad. Do you consider that that may have some repercussions on rates of interest and profits which may become more and more usual? A. I made studies of the rate of earning power upon capital from the year 1920 until 1938,

and with a rising rate of corporate income tax I was not able to demonstrate any real change in the rate of earning power, upon shareholders' interest. Therefore I think that most of it was transferred to the people who bought the goods, and did not rest upon the corporation at all. I think the effect of income tax would be most sharply felt in a period of fluctuation. It would make a business firm more sluggish so that recovery from depression would be slower and weaker.

Q. The existence of price ceilings would probably impede that process, would it not? I mean that so long as price ceilings exist, a rise in income tax rates cannot increase the price of produce? A. That is correct.

Q. With a price ceiling how do you expect the process you have mentioned to work? How do you expect to get the tax shifted if there are price ceilings? A. I cannot answer the question because we have not had a stable situation. We are still in a subdued and partially controlled state of inflation. So that I would have to guess -- and I do not feel very happy about guessing.

Q. Well, do not guess. Put it this way: If a tax on corporations, however, persists for a long time, you feel confident that that would be passed on in some fashion, in fairly large measure? A. Yes.

Q. Passed on to the consumer, or somebody else?
A. Yes.

Q. Then, you will pardon this question, because I ask it in view of the fact that a statement has been before us. However, it would appear superficial that the position you are now taking is inconsistent with the position you took in connection with the double taxation of corporations. That is to say, if the corporations pass the tax on, then their shareholders do not bear a double burden; will you explain

that? A. Yes. Given the fact of the tax, the corporation in effect budgets for annual income which will allow it to pay this tax and still be left with a return on its capital. And it is permitted to do so since, all of its competitors being in the same position, they are all doing roughly the same thing.

Q. All those who are making profits? A. Yes.

Q. All competitors who are making profits? A. Yes; you do not need to worry about the ones who do not make profits. The ones who do not make profits are not a price-making force. They follow the procession; they are not strong enough to fight.

Q. Then, would you take some industry in the thirties, and tell me what proportion of output came from -- A. The figures are not available. I have an article in the Canadian Journal of Economics for November, 1942, in which I show that in every year there are some companies which make losses. But your model position is well above that.

Q. Well then, if normally, and in the long run, a company can include those taxes -- those average taxes -- in its price, why do you say that the shareholder of the corporation is bearing a double burden, if a corporate tax is passed on to the consumer? Why is it also reflected back to the shareholder? A. I will say this, that in the periods in which there is a rapid change in business conditions it means that small earnings are much more sharply reduced because of the existence of that tax, because the corporation tax -- that is, the income tax alone, and not the excess profits tax -- runs upon income as such, regardless of the amount, or regardless of the amount of capital.

Q. It is a fixed proportion? A. Yes, it is a fixed

proportion. Therefore if you have only very small earnings an income tax is still there upon that. And therefore it is an added source of difficulty.

Q. But if your price level is such that you have arranged--

A. But the price level is so arranged only under normal conditions.

Q. And they never exist? A. They can, but you find it over an average of many years, not in one year.

Q. But again, it is only over an average of many years that these forces you have discussed work? A. But the incidence of a change in the tax is going to be determined by the general state of business. That is a definite and perfectly simple matter -- to pass on the tax.

Q. And in the meantime the shareholders of the company, and the companies being gradually pushed out, are being injured? A. Yes.

Q. By bearing a double burden? A. Yes.

Q. That is to say, that injustice primarily comes about during a temporary situation when the normal forces have not had time to work themselves out? A. What you are saying is that those who survive are always able to survive. But I do not think you are demonstrating a condition of justice during a period when some are being pushed away.

Q. I say that during that period you would argue that the shareholder of the company, as compared with other income receivers, is being discriminated against? A. Yes.

Q. Would you go on and say that if the same rates had been in operation for fifty years -- and I will place it at fifty years in order to give you a long time -- that there would still be the same injustice to the shareholders of a corporation, as compared with other income receivers? A. Yes,

I would be inclined to say that.

Q. On what ground? A. On the ground that in periods of depression they are unduly harmed.

Q. And in periods of prosperity, what? A. They may draw profits. But I question whether one bunch of profit would offset the hurt taken in a depression.

Q. Then, one other point, for the completeness of the record: would you mind stating briefly the recommendations of the minority report signed by Professor Pigou? A. I can tell you the page number very easily. It was a special reservation on the matter of cooperatives and appeared on one page only.

Q. I am concerned for those who will read the evidence, so that they may not have any misconception on the matter. Was it in favour of taxing the whole income of cooperatives, do you recall? A. No, I think not.

Q. Or any of the income, or none of the income? A. The recommendation of the commission as a whole was that --

Q. I am asking you now about the reservation that Professor Pigou and those who signed with him made. A. My memory is that I referred to the relevant section.

BY THE CHAIRMAN:

Q. You are entitled to ask for the report, if you desire to have it when you answer. A. If I can have it, I should like to look at it.

Q. This is not necessarily a feat of memory.

BY MR. ELLIOTT:

Q. I have not got it here. A. I have it in Kingston, but that will not help me very much now.

Q. The point is that you did not state the recommendations of those who signed that reservation, but only part of their

argument. A. Correct. It was only an extract I quoted, not the whole of it.

Q. You do not recall what their recommendations were? What were they, in regard to taxation? A. I am sorry, I do not recall. It is nearly three months since I read it, but I shall look into it again, if you wish.

Q. My memory is that they recommended that cooperatives be tax exempt. However, we can check that up later. Then, with regard to the quotation at page 15 of your brief, I am wondering if our interpretation of that quotation is just the same as yours would be. The underlined part reads as follows: "No doubt for the purpose of a corporate tax this contention would be valid." To which contention do you refer? A. The contention that only the net receipts after patronage dividend --

Q. He is saying that only the net receipts after patronage dividends would be taxable for purposes of a tax on corporations? A. Yes.

Q. Now, you say, following that quotation:

"In other words there is the clearest possible recognition that if Great Britain had a corporation income tax such as Canada has had since 1917 then the whole earnings of the cooperatives would be taxable thereunder."

A. Upon that point I was leaning more heavily upon the preceding quotation, and upon the fact that I cannot accept Pigou's argument that this is a mere rebate. I say it is a trading profit. I can see it as nothing else.

Q. So you are not endorsing Pigou's opinion in the part underlined? A. No, I am not endorsing the preceding sentence.

Q. One cannot interpret that sentence without taking in

the preceding one? A. I think we can, in this sense, that he says that so much of income as is corporation income should be taxed under a corporation tax. So that the difference between Pigou and me is not in principle, but rather in the definition of the income. It is the amount, and not the nature.

Q. I believe he agrees with you, or you agree with him, that the source of the income is important in determining whether or not it is profits? A. Yes.

Q. But the disposition of profits makes little or no difference? A. Correct.

Q. I am not so sure that you are in agreement with him as to whether any of the cooperative net revenue is profit? A. I am very clearly differing from him.

Q. You differ from him? A. Yes.

Q. In your appendices I refer you to the statement of farm income. A. Do you mean table No.2?

Q. I mean table No.3; I should imagine that there is a misprint on that page. A. Yes, the expression should be "imputed rent" and not "imputed print". I am a very bad proof reader.

BY MR. VAUGHAN:

Q. You say at page 19:

"But the fact is that the winning of a profit is the price of survival. Without profit the cooperative cannot balance its accounts."

Cooperatives, as you know, claim not to make profits, and yet they do survive and flourish. How can that be explained?

A. On the ground that they do make profits. If they are trading for their own account they cannot help making profits.

Q. That is, you say that they do make profits, and that therefore they are able to survive? A. Yes, the fact of survival is the proof of profit.

Q. I should think that is a point of disagreement, too. Then, another point is this: you deal with the question of rebates, and you say that to be a real rebate the percentage of rebate has to be determined in advance; is my understanding correct? A. Discount on purchases, yes.

Q. Does that apply generally in business? Are there discounts given which are not given in a stated percentage? A. I do not know of any. However, sir, I defer to you, because you have more commercial experience than I have had.

Q. Have you ever heard of a discount being given on the volume of business, the discount depending upon the volume of business purchased? Yes, but it is stated in advance that, "if you buy one article, you get no discount; if you buy a dozen you get a certain discount, and if you buy a carload you get more." It is not a matter of taking an account at the end of the year, but rather of deciding, "I can pay that discount."

Q. Probably not; it is fixed in a degree, although it varies according to results, and in respect of the amount of business? A. What I have in mind is this: let us say that I am manufacturing women's ready-to-wear clothing. You, as the salesman, bring around the goods. I will offer you terms, and if the articles sell well we are both satisfied. You receive a discount. But it is in the horse-trading about price that is done before any goods are sold, or any contract is made, that the difficulty arises. He may say, "Well, we will do this for you if we can bring up

a certain volume."

Q. You are decided in that distinction between refunds in corporations and in cooperatives. One is fixed and the other is not? A. Yes.

Q. You make that distinction? A. Yes; but I defer to your experience.

Q. I think what you say is generally correct. I am referring to corporations, the amounts are fixed in advance.

BY MR. ARNASON:

Q. In your brief you deal with the taxation problem as it affects cooperative movements as a whole, I think? A. Yes.

Q. Although you refer rather specifically to the marketing cooperatives? A. Yes.

Q. In connection with your general argument respecting mutuality, do you think that, for example, in the case of credit unions, which is a closed group so far as their transactions are concerned, with the probable exception of some investment income -- do you think in the case of credit unions, where the members pool their funds, and out of the funds so accumulated loans are made to the members only, and an interest rate is charged on such loans -- and after expenses at the end of the year have been calculated disbursements are made to the members in two or three ways; possibly they are made as a refund of the interest paid by the borrower on the loan, or in the form of dividends on shares, and possibly interest on deposits -- do you think that in a case like that there is any profit that results to the credit union itself, apart from its members? I ask that question because it does not do any business with non-members?

A. If it is a legal entity and if it is in jurisdiction in which there is corporation income tax, I think you are

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compelled to say that it has income and it ought, upon that income, to be taxed.

Q. That is your general argument? A. Yes.

Q. Following that further: I was interested in one of the questions Mr. Parker asked you. He inquired whether you are aware of the existence of a fairly large cooperative group which did not have a corporate status, but which nevertheless carried on business for its members in exactly the same way as an incorporated cooperative organization carries on business. That is, it buys from its members, and perhaps on behalf of its members, or may market on behalf of its members. Do you ^{think} that a group of that kind, without a corporate status, has any profits, apart from the members who comprise it? A. Yes, it is a trading venture, and the fact of incorporation is not so important as the fact of its being a trading venture.

Q. You think, then, that the existence of the corporate status is not crucial? A. There are two things: first of all, there is the economic entity and, secondly, there is the legal incorporation -- either, or both together.

Q. What do you say about a partnership? Do you say that a partnership has profits apart from the members who constitute it? A. I think that is what is happening presently under excess profits taxes, because they are brought specifically under the same kind of language. Otherwise you would have had people drifting out of corporate firms into partnership firms, if there had been any gain as a result of it. If you have a corporate income tax you are compelled to observe it. If you are going to throw it out, you had better throw it out bodily, and not bit by bit.

Q. You argue that it is the existence of the group incorporated or otherwise, which makes the profit? A. Yes, if there is a trading entity, then that trading entity has a profit.

Q. Do we understand you to say that mutual insurance companies do not have a profit? I may have misunderstood you, but -- A. If it is a trading entity, and if it is bearing a risk, then it has income.

Q. Now, I would ask you a further question in connection with page 30 of your brief. You say right at the top of the page:

"No matter what attempts are made to maintain their present tax-free position, it will, in the end, be destroyed by the growth of cooperatives to take advantage of it." I take you to mean there that they will take advantage of the tax-free position? A. Yes.

Q. Now, in your study of the cooperative development either in Canada or in Great Britain, have you come across any examples where it is possible to state categorically that cooperatives were organized simply to take advantage of a tax exempt position? A. To say that they were organized for that purpose I would require knowledge of motive which no one other than the organizer himself could know. So that I cannot answer that question.

Q. The reason I ask you lies in your statement that the present tax structure will in the end be destroyed by the growth of cooperatives to take advantage of it. A. I am not arguing that as the sole reason why they grow. I am merely saying that the general conditions under which they exist will be so phenomenally favourable that they will grow to a size, at which point you will be compelled to tax them.

BY THE CHAIRMAN:

Q. That is, they come into existence in a field where that condition exists? A. Yes. The growth will be so lush that they will push so many taxpayers out of existence you will have to turn around and cover that portion of the total trade of the country. It may be done by a sales tax or in some other way, but in some way you will tax them.

Q. Whether they consider it or not, the advantage is there? A. Yes; I am not saying that they do it for that sole purpose; I merely say that, conditions being favourable, they grow.

BY MR. ARNASON:

Q. That throws a different light upon the situation. It has been argued before the Commission on Co-operatives that cooperatives may be organized and will be organized solely for the purpose of taking advantage of tax exemption. I take it that you do not hold to that view, but that the tax exemption may be one fact. A. I cannot know motives. But I say that here is a situation in which cooperatives ought to grow so rapidly that they will be compelled to come under a heavier taxation than they now bear. I can see many other disadvantages, -- but that is not the question.

Q. For the purpose of clarification, I should like to ask you a question respecting your brief at page 42. In the last paragraph on that page you say, in part:

"The producer cooperatives should not be encouraged by a recast section 4(p) to confine their dealings to their own membership only, nor to attempt to serve only the smaller and less prosperous farm operators."

Just what do you mean by that? Do you suggest that if co-operatives want to serve the less prosperous groups which

they have been trying to do, that they should not be encouraged to do so? A. No, no. What I am saying is this, that in the earlier hearings there were various witnesses who wanted to revise and narrow section 4(p). What I say is that if you are going to have a producer cooperative at all, then you ought to encourage it to go out and get as much business as it can get, where it can get it. You should not try to have a tax-free cooperative which would deal only with its own members, nor one which would try to deal only with the smaller and less prosperous farmers. If they are going to be there at all, then let them go out and take all they can get. If they are under an equality of taxation, I want to see them get all the business that their efficiency will make possible. But of course it is fundamental that they be under an equality of taxation, because as an ordinary trading source they should not be given a bonus.

BY MR. NADEAU:

Q. There is one point which is not clear in my mind. Do you draw a clear line of demarcation between cooperatives and insurance mutual companies, as regards the principle of mutuality? A. No, what I was saying was that I did not like to draw or take conclusions out of a field of insurance into the general field of trade, without modifications.

Q. What would those modifications be? A. The modification of time over which a contract might run, and the uncertainty of the risks.

Q. Then, in respect of the question of patronage dividends, do you see any difference between the refund made by mutual insurance companies to their members, and the refund made by a cooperative to its members? A. It would depend upon the terms upon which that insurance contract was written.

That is, in the case of the ordinary producer cooperative which buys -- and even makes a payment at the end of the fiscal year -- that is, to my mind, a clear distribution of trading profits. If an insurance company writes insurance at a fixed premium, I think it also makes a trading profit.

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Q. So both would be taxable. A. Yes.

BY MR. VAUGHAN

Q. If a fire insurance company dealt only with its members, if it did not go beyond that, would that come under mutuality? A. If there is a trading entity and if there is a corporate income tax, I am afraid ---

Q. Would you call the assumption of insurance trading; supposing a group of people got together and insured each other, would you call that trading? A. Is there a common fund that they paid into or do they merely give an obligation to meet their proportion of the total risk?

Q. They would be charging a premium, everybody would pay a premium sufficient to cover the risks. Then if there is more collected than is needed, the difference would be returned to the people who are common insurers. That is, they insure each other and do not go beyond themselves. A. The heart of that contract is unlimited liability, is it not?

Q. Well, usually there is a liability in mutual fire insurance. A. So, of course, you are getting into something that is different, where there is an open account under which the members guarantee to meet the losses.

Q. And insure each other. A. That is a different proposition.

Q. I think that is Mr. Nadeau's question. You drew a distinction between the mutual fire insurance companies that operate on that plan, insuring its members only -- they join together and insure each other and do it on a cost basis and return any excess that may have been collected over the cost -- you make a distinction between that and the so-called trading cooperatives. A. Yes.

Q. On what basis? On the basis that they are entirely mutual? A. On the basis of the unlimited liability.

Q. Unlimited in which way? A. In the sense that there is a premium note or something of that kind under which they say at the end of the year that all losses will be distributed among themselves in the same proportion.

Q. That is what you call unlimited. In some cases there is a limitation in the mutual fire insurance company; in writing the contract they agree to assume liability up to a certain point, usually so many times the premium. A. Yes.

Q. That is not unlimited; it is limited. A. I think our difficulty is to find a form of wording that will cover the amount that is not paid in to which the member is liable.

Q. You see, I was just trying to find out on what basis you make that distinction. A. In one case, where you have a closed transaction, this economic entity is trading on its own responsibility and what it has as a profit at the end of the year is a profit to it, whereas in the case of a mutual insurance company, would not it be possible that they would merely deposit an obligation to pay each one his proportion of the total losses incurred up to a certain maximum.

Q. But they operate in different ways. Some operate on what they call premium notes and others operate by other means. Some of them have a limited liability, that is a liability up to a certain point. A. I think a distinction has to be made that where there is a group, a small group, that there is a mutuality, that

they deal with each other and not with a company and, secondly, that they are in a sense partners. They are responsible for the losses above the initial payment.

Q. Suppose they have what is called an attorney-in-fact and deal in such a way that the risks are distributed among the different members. That would not be a corporation at all, it is just like an ordinary, single person looking after the business and arranging the insurance. A. He is really a sort of stockholder.

Q. He is not a stockholder himself. A. He is holding for the others.

Q. He is holding for the others, and he sees that the insurance is distributed on a certain plan and that the premiums are collected according to the terms of the contract. That is the way the American reciprocals operate. Would you call that different from a cooperative? A. Yes, I think I would, it is certainly much different from the producer cooperatives in this country in which there is a purchase and sale at a profit. What happens in that case is actually not known until the end of the year when they pay \$1 or \$10, depending on the run of risk.

Q. The main point is that you see some distinction between a mutual fire company and a cooperative, that is as we understand a cooperative; that is, a consumer or producer cooperative? A. Yes, I do.

BY THE CHAIRMAN:

Q. If it were possible to attain the ideal of business enterprise and operate exactly on the line, no profit or no loss, there would be no tax? A. Yes.

Q. That is the cooperative idea, no profit. Assuming that some company by misadventure, or whatever you

like to call it, does make a small profit but returns that profit to its component members. Would you say that that inadvertent profit was taxable? A. Yes, on this ground ---

Q. It is a profit? A. It is a profit, yes.

Q. It is really impossible to operate without a profit. A. I would think so, yes. If you buy at one price and sell at another, it is a profit if the price is big enough.

Q. The method of dealing with that particular surplus has nothing to do with it. A. No.

BY MR. NADEAU:

Q. My second question has to do with the agency contract, to which you refer on page **nineteen** where you say, referring to the cooperative:

"If it acts as an agent or broker upon the instructions of its members it be charged only enough to cover its necessary outlays."

Suppose that the members give to the agent necessary powers so that he could keep their refunds and operate with those refunds as working capital, would you think that those refunds would be taxable? I do not know whether I have made my question clear. That is, would they be taxable in the hands of the agent? A. Well, it seems to me that if I were organizing a company I would endeavour to twist the English language in order to beat the taxation. Is not that what is involved? There are various devices whereby a cooperative can operate and build up an amount of capital by which it operates. It is all a matter of raising capital.

Q. Then there would be no profit, it would be only a matter of raising capital. A. If the agent, as

such, would have no capital, no.

Q. No capital? A. No profit, but it would then become a joint venture after the first deal had gone through.

Q. If that working capital was invested and it bore interest, would not the interest be a profit for the agent or for the members? A. It would be a profit on their joint venture.

Q. For the members. A. For the members and the agent together, and he would cease to be an agent.

Q. At that moment he would cease to be an agent.
A. Yes, I think so.

Q. When you speak of an agent, you mean cooperative?
A. Well, the provision as I understand it was this, that you have a man who, without taking the risks, without taking ownership accepts an obligation to dispose of produce. He disposes of it at a set price, at a price which is the best he is able to get. Now then, he does not remit in full; he remits, we will say, 95 per cent and takes 5 per cent.

Q. According to the instructions received from his principals. A. Yes. Now then, the next step is this, is it not: the agent and his principals are engaged in a joint venture to which the agent obviously is now acting in the sense of a partner with his principal.

Q. Both are different legal entities. The agent is a cooperative and the member is a natural person. They become partners then. A. I think that is what happens, is it not?

Q. But if the agent is a natural person; is there any change in the set-up? A. No.

BY MR. FILLMORE:

Q. There is one question that might be pertinent. Supposing a man was an agent not only for one person but for a hundred persons, how would you size up that situation? A. They have given to him a living economic entity; he becomes the manager of their joint capitals

BY MR. ELLIOTT:

Q. There is one question I wanted to ask. You recall that you said that the proposal to encourage some industries and discourage other industries would work in an ideal world, but not in ours? A. Yes.

Q. It was suggested to us in Halifax that the opposite contention was a valid one, namely, that while ideally it might be undesirable to use the organization as a device for encouraging or discouraging particular industries, in practice in the real world such devices were used through the tariff and in a number of other ways and that therefore to say in this particular case that the use of tax discrimination as an encouragement was desirable--that might be so in an ideal world, but not in one in which these things are done every day.

What would you say to that? A. How long have I got to say it? Perhaps I can answer briefly. We have started off in this country with a tariff, but we have been assuming different things like the Crow's Nest rates and other counterweights, and in some cases the sky is the limit. We do this, that and the other thing. My own impression is that we have set up a lot of useless machinery, each piece of which offsets the value of the other.

Q. But what is the application to this particular problem? A. If you have to start breaking it down,

you can start here.

BY MR. FRANCIS:

Q. Then you start at a point where certain advantages have been given to certain groups; you start at a point where there is some suggestion that advantages may be given to other groups. A. That is what has happened, is it not?

Q. Your suggestion is that we should stop at this point. A. You have to unwind some time, and here is a point where you can unwind.

Q. I notice that you refer to this document as a report. Why do you use that word in describing it? This is the first report we have had submitted to this commission, I think. Why do you call it a report?

A. Because I am not being paid by the Commission, but I am reporting solely to them. It is not a brief, it is not an argument which I make.

Q. I suggest to you that it is an argument, nothing less. It is nothing less than an argument and I would like to know why you call it a report. A. I wrote it believing it to be true, believing that this is what I would say if I had come as a private individual and without being retained.

Q. May I direct your attention to page forty-five. You told Mr. Arnason that you could not know motives; that was your reply to one question by Mr. Arnason. May I direct your attention to the second sentence in the last paragraph on page forty-five, which reads:

"What a curious thing it is that so many of the professed inheritors of the proud tradition of the Rochdale pioneers should be, in this country, capitalists with resources far greater than those pioneers

ever dared to dream of, and who hope, 'by altering their language', to escape from the taxes upon their profits."

Was there any suggestion of motive there? A. Yes.

Q. You do not suggest any motive there. A. I do not think I could know the particular motive; I can make a guess.

Q. This is a guess, is it? A. Yes.

Q. How many more guesses are there in this report?
A. None, I think.

Q. That is the only guess? A. Yes.

Q. All right, we will deal with the others later.
I notice that in the note at the bottom of that page you refer to the words of Lord Bramwell. A. Yes.

Q. You will agree that a statement by Lord Bramwell is very useful in this case. A. Yes.

Q. And you accept it? A. Yes.

Q. Let me read it to you. I should like to read it exactly as it is given. This quotation is not correct.

THE CHAIRMAN: You are not going to read the whole judgment, are you?

MR. FRANCIS: I am going to read the sentence exactly as it appears because it is very helpful, I think. This covers the very thing we have been arguing about. The citation is Appeal Cases, 10, 1884-85, page 438, and I quote from page 448. Your lordship will remember that in this case the majority judgment was given by Lord FitzGerald and Lord Blackburn, and the minority judgment was given by Lord Bramwell. Now that we have that clear, I should like to read from the report as follows:

"As I have said, the whole difficulty, the very existence of the question, has arisen from the

inaccurate use of the expression 'participation in profits,' instead of 'participation in the sum that would be profits but for the right to participate.'" That is the whole point that is raised here. I should like to give the exact language used, which was as follows:

"The matter may be illustrated thus: If the crown is right, who will pay the income tax on the whole three-thirds? The shareholders? If so, they would pay on profits they do not receive. The participating assured? Then they would pay income tax on something which is not within the Income Tax Act.

The question is very important. As far as insurance companies are concerned, all they will have to do will be to alter their language."

This is the exact quotation.

"But if the contention of the crown is right, income tax will be payable in all cases in which employers have agreed with employed that, besides fixed wages, the employed shall receive what is called a share of the profits. The income tax will apply to co-operative societies strictly so called, and be payable on a sum falsely called profits, with no deduction of the wages contingently payable to workmen, if gross profits enable them to be paid."

Then there is a reference to Mr. Dicey and the quotation continues:

"I think it would be most disastrous, and most unreasonable."

That is Lord Bramwell, and in short he says that just because you call them profits, they are not profits. We agree with that. You will find those are the exact words.

THE WITNESS: What is your question?

THE CHAIRMAN: Mr. Francis was just putting that statement on the record.

BY MR. FRANCIS:

Q. You say that there are resources far greater than those pioneers ever **dared** to dream of. What did the pioneers dream of? A. They were men who had incomes in the order of 12 shillings per week for a day of not less than twelve hours. Their ultimate expectation could not be to have a capital greater than £200

Q. Were their dreams limited by the resources?

A. Yes.

Q. In the paragraph above you refer to the whole trend of cooperative thought. I take it then that you have studied cooperatives very widely. A. I have tried to.

Q. Are you acquainted with the book called "Co-operation" by F. Hall and W. P. Watkins? A. Not that one, no.

Q. I should like to refer to page eighty-six, where it is stated:

"That as soon as possible, this society shall proceed to arrange the powers of production, distribution, education and government, or in other words to establish a self-supporting home colony of united interests, or assist other societies in establishing such colonies."

That is how the objects of the pioneers are set out. I think that is authoritative. Do you agree that that was one of their dreams? A. The intention there is to have a production cooperative, which is part of the Christian-socialist dream in which you have total

communism. I think your difficulty is enlarging that to the idea that it is going to have the whole nation in one colony and under one direction so that it would have that very great resource. What happened actually in many communist experiments was that they were small ventures in which the resources were very small.

Q. As a matter of fact the resources have grown very huge by adopting the rules they set down besides those aims. A. If you will excuse me, I think you are totally wrong. I refer you to Beatrice Potter's book. I refer especially to the ^{edition of} ~~conditions in~~ 1895 and not to ~~the late~~ ^{volume on the same general topics which she wrote in collaboration} ~~those are dealt with by~~ her husband, Sidney Webb.

Q. I think I am familiar with that very excellent book, but we are talking now about the aims of the pioneers. A. Yes, and that is what I am saying.

Q. I am suggesting to you that the aims were very high. A. I suggest to you that in line with the early resources, which I here speak of, they were limited and modest aims.

Q. You refer to the professed inheritors. A. I understand that in their own eyes they are the people who are developing the Rochdale principles in Canada.

Q. And when you refer to some organization which hopes by altering its language to escape from taxes, you make a very serious charge. A. If the word "avoid" is less liable to implication, I would accept "avoid", but I still stand by the statement.

Q. Now with regard to the paragraph of the brief in which you state that cooperatives will not be as profitable as any other commercial venture, that it is contrary to the whole trend of cooperation. This morning when you were giving your various qualifications you

mentioned that you had done some work for private interests. Have you done any work for cooperative interests?

A. No, but I am perfectly ready, if you want to give me a commission.

Q. I would want to think that over. A. I bind myself; I do not ask for notice.

Q. I am afraid that I would in that case. Have you done any special work in connection with cooperatives such as Professor Fowke, or Professor Mackintosh; have you done any special work? A. I have made financial studies of their earnings, but not beyond that.

Q. And do any of those publications of yours relate to cooperatives? A. My own writings?

Q. Yes. A. No.

Q. And you have not given any classes to students on cooperatives? A. No.

Q. I presume you have read "Agricultural cooperation in Western Canada" by Professor Mackintosh. A. Yes.

Q. Do you agree with his final conclusions?
A. I read it fifteen years ago.

Q. I will let you look at the book. Would you mind reading that paragraph on page 148. A. It reads:

"Many steps in the marketing process (all interest-manned) may mean simply a confusion of the results of a central market. By thrusting forward through cooperation his business organization to the central market, the farmer is enabled to organize his productive enterprise according to the market results which he is in position to distinguish and interpret."

Q. and the rest of it applies. The next point deals with adult education and I want to ask some ques-

tions on that. A. The next paragraph deals with the fact that your cooperative organization eliminates the middleman and that it has been found in the case of live-stock and dairy products that this has brought about an improvement in the quality of the products.

Q. Do you agree with that? A. That is what I am saying, is it not, if you have a cooperative.

Q. Do you agree with that statement? A. That is the whole point that I am making on adult education.

THE CHAIRMAN: That is a rather difficult question. If I were to ask you whether you agreed with Pollock on torts, what would you say? That is really what you are asking Professor McDougall.

BY MR. FRANCIS:

Q. I should like to refer to one statement in the

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brief, on page six:

"But this ranks as a piece of desirable adult education; it is not a necessity of the trade."

Would you like to qualify that? A. No. I might explain it and make it more certain if there is something that is not clear, but I certainly stand by my statement.

Q. You admit it is very helpful to the trade, it is helpful to the producer and consumer? A. If you have a trade in which people are uncertain about the interpretation of quality grades, there are two ways you can approach it. You can either have the government guarantee the grade, as I believe the grain trade now has, or else you can give the farmer his own organization and ask him, since he is a member of it, to trust it. Which one you do is a matter of indifference, but so far as having the cooperative is concerned, I think it is necessary only if the farmer, even if the government grading is established, refuses to trust it. That is a question of fact.

Q. Referring again to the so-called report, at page one. You come forward taking advantage of special training and experience in the art and science of political economy. I suggest that the first dozen pages of your report is a legal argument. A. Well, I had been reading the earlier reports of the British commissions.

Q. It is a legal argument? A. It is an attempt to put what lawyers have said in language which any economist can understand.

Q. Do you think you were successful?

THE CHAIRMAN: I think we will have to say that, Mr. Francis.

BY MR. FRANCIS:

Q. On page seventeen, where you list your arguments, you say under (c):

"That the whole of the profit or gain of a cooperative society is due to the patronage of its members."

MR. FILLMORE: That is an argument which is advanced by the cooperatives.

BY MR. FRANCIS:

Q. That is what I say. It has been argued that the whole of the profit or gain of a cooperative society is due to the patronage of his members. Who used that argument? I have not heard that. A. I do not think I can attach it to anyone. I have read a great many things on this subject and I take that to be a fair statement of a family of arguments, a summary.

Q. I shall deal with it a little more fully in a moment. I should like to direct your attention to page nineteen, to the footnote at the bottom of the page which reads:

"Time has not permitted the same careful documentation of this change in Canada, but the indications are that it has come since 1939, and for identical reasons."

That relates to the change in the terminology, to a change in the use of the word "profit" to some other word. What were the indications? A. Notably the testimony of Mr. Hull before this Commission.

Q. In the province of Saskatchewan there are quite a few cooperatives, and I recall that by chapter 54 of the Statutes of 1928, which is just eleven years before this date, the word "surplus" was used; the word "profit" was not used. That is not an indication, is

it? A. There was a corporate income tax at that time. As to the time in which the changes occurred, as I say, I have not been able to get every cooperative statement.

Q. Have you examined cooperative legislation, the statutes under which cooperatives are organized? A. No.

Q. If I am not mistaken, you will find in one province, possibly in two--in British Columbia at least--that the word "profit" is used.

THE CHAIRMAN: In Ontario also.

MR. NADEAU: In Quebec.

BY MR. FRANCIS:

Q. And since 1928 in Saskatchewan the word "surplus" or a similar word has been used. Do you suggest that this change in terminology has been brought about with taxation in view? A. As to what the purpose was, one can never be certain. I can certainly see an advantage of having that.

Q. I want your opinion. Are you guessing again or do you know? A. I am saying the indications are; I am not saying that I know.

Q. What are the indications? A. The testimony of Mr. Hull and the way in which this change has occurred.

Q. I suggest to you that the law in the old country and in this country is out of line with the practice that has grown up over many years; it is the law that is out of line, not the cooperatives; would that be fair?

MR. PARKER: I do not think you should ask this witness what the trend of the law is.

BY MR. FRANCIS:

Q. On page twenty you say:

"The nature of the cooperative dividend now shows up clearly as a device to attract and retain

custom for a business organization."

Is that your idea of what the patronage dividend is, a device to attract and retain custom? A. It is certainly one of its major advantages, yes.

Q. Would that apply to consumers' cooperatives as well as producers' cooperatives? A. Yes. If you will look at the financial statements you will discover that the margin of profit made is very much higher than it is in any ordinary retail business, and the reason for that I say is this: the people know that they will get back part of the profits and they do not demand the same level of service.

Q. I am speaking from memory, but in Toronto a chartered accountant gave evidence and pointed out that the mark-up in a private business was 50 per cent while the mark-up in the cooperative was 16 per cent. That is evidence which is before this Commission. A. I do not think he was comparing the mark-up on similar goods. I would want to be certain that he was because I know in the grocery trade, in the more efficient chains, the mark-up is in the neighbourhood of 17 or 17½ per cent.

BY MR. ARNASON:

Q. On what do you base your opinion that the mark-up in the case of the cooperative is generally higher than in the case of the retail trade? A. I was not saying it was higher, I was saying that with an equal mark-up they are able to make a higher profit because they are not required to give the same level of service and therefore the net profit remaining to be distributed in the form of patronage dividends and otherwise is larger.

Q. What type of service are you referring to;

what type of cooperative are you referring to? A. I am thinking particularly of consumers' cooperatives.

Q. What do you mean when you say that they are not required to give the same type of service? A. Deliveries, and things of that kind. You will find the same thing in the proceedings of the British cooperatives as outlined in the commission which sat in 1919-20. There was one very interesting quotation by Mrs. Knowles, if I may read it.

Q. I was referring to the practices in this country. Is it your opinion that generally speaking they do not render the same type of service in the same type of business as private traders; is that what you are suggesting? A. Yes. As I understand it, the most effective distributor of groceries in this country is the Loblaw Company.

Q. I was referring to the smaller groups, either the retail merchants or the retail cooperatives. A. I cannot explain why the percentage distributed is so high except upon those grounds.

BY MR. ELLIOTT:

Q. You are not going so far as to suggest that the cooperative dividend is necessary in order to obtain trade? A. Oh, no.

BY MR. ARNASON:

Q. The purpose of my question was to ascertain upon what you base that opinion. A. You will find in the December, 1943, issue of the Canadian Co-operator, the annual report of the Co-operative Union, I think, for 1942. You will find 117 different rates, and the rate distributed is higher than I can find anywhere in the retail business in the province.

Q. Do those percentages refer to the same type of business? My recollection is that there is considerable variation in the types of service rendered by those organizations. However, I will not press that any further.

A. It is a very short report and I just cannot tell, but I can see that the dividend distributed is very high.

BY MR. FRANCIS:

Q. I refer you to the bottom of page twenty-one where you say:

"How the members of the cooperative elect to distribute those trading profits ought to be left to themselves to decide. But surely it is profoundly improper that a private decision of that kind should be allowed to govern their public obligations. It is good logic as well as good law that it is the source and not the destination which determines whether profits or gains exist."

On what basis do you give that legal opinion? A. Subject to my capacity to understand the law. It is the Mersey Docks and Harbour Board case.

Q. I want to test that statement in connection with a trustee. Would you say it is good logic as well as good law that it is the source and not the destination which determines whether profits or gains exist?

THE CHAIRMAN: Is not that pure argument?

MR. FILLMORE: I can go into the next room and bring any number of authorities for that statement.

BY MR. FRANCIS:

Q. Would it apply to a trustee? A. If you are asking me if I know the law on trustees, I am afraid I do not.

Q. You purport to know a good deal of law in this report. On page twenty-three, near the middle, you say:

"If those who put up the original capital can be persuaded, or cajoled, into foregoing any return upon it there is more left to pay to others."

A good deal of evidence is that the members of cooperatives have very gladly put up capital with no hope of any return on it at all; they have put it up for the purpose of establishing a service. Why do you use the word "cajoled"?

A. If there is any variation in the contract under which that money was originally contributed, I would think that word might very well fit.

Q. Did you have any particular thing in mind?

A. I believe there are cases now under decision under which people who put up ^{the} ~~an~~ original ^{capital (of the co-operative) as elevator or commercial deduction's} ~~elevator~~ now wish that they could either get their money back or get full contractual interest upon it.

Q. Then at the bottom of page twenty-three you say:
"To assert as some of the less discerning co-operators do, that the whole productivity of a cooperative is to be attributed to its patrons alone to the exclusion of all the other factors, is most convincing evidence of their enthusiasm for the cause; but as argument it is deplorable."

Whoever asserted, before this Commission or otherwise, that the whole productivity of the cooperative is to be attributed to its patrons? A. It seems to me that the device of the patronage dividend is in fact a statement that that was their belief.

Q. Let us look at the other element. What about labour? Do you suggest that the cooperatives do not pay

labour a wage just as private profit business does?

A. It pays a wage, I cannot go beyond that.

Q. It gives a share of the profits to labour through wages, is that right? A. Yes.

Q. And in a good many cases capital also gets a return. A. In some cases, yes.

Q. In very many cases. That was one of the Rochdale principles, that capital should get a modest return.

A. You seem to be proceeding to narrow that very sharply.

Q. Very many cooperatives, according to the evidence, pay interest on share capital. A. Some of them pay interest.

Q. So that capital is another element. A. The fact that some cooperatives pay dividends upon their capital is not proof.

Q. And those that do not pay interest or a dividend on capital forego it of their own free will, is that right? A. They forego it. The degree of free will I cannot say.

Q. The argument that you make here stresses the importance of capital in the productivity and the return that capital should receive. A. If you have a limited liability company so ~~that~~ the residual ^{profit or} ~~borrower~~ loss ^{falls upon} ~~is~~ the capital of the company, then I think there are very clear grounds for saying that if it bears losses it ought also to take the profit.

Q. I am still in the dark as to where the assertion comes from that the whole productivity of a cooperative is to be attributed to its patrons alone; can you tie that down to anything? A. I have said that I think that the fact of making a patron the receiver of the residual income of its operations is in a sense saying,

"here is the real heart and mainspring of the business", and I do not believe it.

Q. You do not believe that? A. No, and I can prove it statistically.

Q. Why do you say the argument is deplorable; why do you describe it as deplorable? A. Because it is not right.

Q. And anything that is not right is deplorable. A. If it is as bad as that, it is deplorable, yes.

Q. In the second paragraph on page twenty-four, referring to the economic system generally, you say:

"It suffers partial breakdown in business depression, and, internationally, in war; but its productivity at the lowest point is so much greater than the happiest possible results of self-sufficiency that we never think seriously of reverting to that state."

How do you arrive at that conclusion? How did you make your comparisons? A. It is a historical synthesis that you can see at each business depression your system of exchange breaks down internally and you can see it breaking down as between nations. Then every time when you try to recover you try to save it again.

Q. It has been suggested before this Commission that if production was more closely related to consumption we might avoid some of the pitfalls which you have mentioned and to which you have referred; what would you say about that? A. It is a very limited and imperfect attempt to explain what happened; it is pretty feeble economics.

Q. Would it be deplorable? A. It is on the edge of being deplorable; I merely say it is feeble.

MR. PARKER: Where was that placed before the Commission?

MR. FRANCIS: In Saskatchewan and Alberta, I believe, in one of the briefs.

BY MR. FRANCIS:

Q. I should like to know what supports this statement that its productivity at the lowest point is so much greater than the happiest possible results of self-sufficiency that we never think seriously of reverting to that state. Have you any support for that? A. Yes, in the proceedings before the Duff Commission in 1931-32 one of the commissioners was strongly of the opinion that ~~in order to have~~ a self-sufficient agricultural industry ~~it was~~ ^a necessary ^{ity} ^{because adequate} that ^{would never again} international markets ^{be} ~~available for~~ ^{open to} the people of the west. I ask you to consider that the pioneer fringe is bitterly and terribly poor until it gets into contact with world markets.

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Professor McDougall

Q. That is a matter for argument, and we will leave it there. Then at the bottom of page 24 you say:

"'Cooperation' in the narrow and specialized sense of the word is largely an inflation of the ego based on his ignorance of how the world runs."

In connection with that, what would you say about the statements of some of the leaders of thought, and the leaders of government in North America? What would you say about those who have argued very strongly in this connection? I do not want to mention any names; you can recall the names?

A. I never believe in holding people strictly to account for after dinner speeches.

Q. Scores of people have come before this Commission and rather seriously put forward suggestions. How much of this evidence have you read, Professor McDougall?

A. I have read everything up to Vol. VII, and then I have been compelled to jump.

Q. I remember that when you were being introduced you mentioned that you had not heard of the Maritime Fishermen?

A. Yes.

Q. Have you read any of the evidence which was put before the Commission in the maritimes?

A. No.

Q. Have you read the resolution that was passed at the Hot Springs conference?

A. Yes.

Q. Then on page 25 I notice you make an assumption after taking an illustration where the income is \$5,000. That is a big assumption for members of cooperatives, I suggest to you?

A. Well, that was aimed specifically at the grain producers. There are certain studies produced by the Department of Farm Management of the University of Saskatchewan, which I used as base. They are in Agricultural

Extension Bulletins Nos. 37, 43, 46, 52 and 105. Using them as base I made an attempt to distribute the farmers of Saskatchewan in the amount of their labour incomes only, that is income available after the payment of 6 per cent of interest upon their capital for the year 1944. Upon that basis I find that 23 per cent of all farmers ought to be between \$2,000 and \$3,999; 18.02 per cent should be between \$4,000 and \$5,999; 10.69 per cent should be between \$6,000 and \$7,999; 6.42 per cent should be between \$8,000 and \$9,999.

Q. From what province is that? A. Saskatchewan only.

Q. Would it be fair to suggest that those incomes which are higher there are due to the existence of cooperatives for a number of years? A. No. This is a function of total productivity. It is not in any sense related to the existence of cooperatives. This is the product of farming operations.

Q. That is your opinion? A. Let me put it in this way. What I have done is to take a frequency distribution as at the years 1925-28. I have then displaced it bodily to the right to allow for the difference in total income in Saskatchewan between the average of the years 1925-28 and ¹⁹⁴⁴1924. Then I have established the same skewed frequency distribution for the one period as for the other, although the writers of that report, bulletin No. 105, said there had been a very sharp increase of efficiency in farming between those two dates, and that it had been more rapid among large farmers than among small.

Q. Now let me do a bit of shifting. I think you said you had not examined the income of the fishermen of the maritime provinces? A. As I say, I had not yet received the proceedings of the eastern section.

Q. I suggest to you that these cooperatives have been formed, as has been pointed out, to serve and to assist the low income tax groups? A. If you want to say that of the east, yes, I will agree. The fishermen have been abominably poor pre-1939.

Q. And that was under the system in support of which this argument is advanced? That is true? A. No. I make no argument to support a tariff.

Q. There is evidence before this Commission that the operation of cooperatives among these low income tax groups increased the personal income of the members. You would agree that that is a desirable thing, in the public interest? A. Yes.

Q. You would agree that in so far as it does that, it relieves the state from some obligation? A. You speak now of people who, lacking such additional income, would be upon relief? Yes.

Q. And there is evidence before the Commission that people who are not in receipt of taxable incomes, because of the operation of cooperatives get into the income tax group, and you would agree that is in the public interest, both for their own good and for the good of the state generally? A. It is desirable that we should all have more income.

THE CHAIRMAN: The Commission is inclined to agree.

BY MR. FRANCIS:

Q. At the bottom of page 26 you say:

"At any level of income there is a gross discrimination in favour of the cooperative form; and it is cumulative in its consequences."

Would that apply to people in low income tax groups,

who are not taxable? A. This is a discrimination against the corporation and in favour of the cooperative.

Q. At any level? A. Regarding the two institutions.

Q. Would you indicate what you mean by that statement?
A. Yes. I am taking first a limited company in competition with a cooperative, and I say that at any level of income of the respective members or shareholders, there is a lower burden of taxation upon the member of the cooperative than there is upon the shareholder, the income of the two being derived from the same economic function.

Q. Is that possibly because the profit-making companies charge the customers too much? A. No, that has nothing to do with it. Regardless of how they get it; on a given dollar of income, they have to pay more in taxation.

Q. At page 27 you refer to a Mr. J. R. Love. Have you any evidence to show that Mr. J. R. Love speaks for anybody but himself? A. Well, it was a propaganda booklet which was put out by the Co-op News Press. I took it for granted that at least they did not disapprove of his issuing it, and in the second place I could find many historical precedents for what he has said.

Q. In Canada have you found any responsible leader making these statements on behalf of a large number of people?
A. I wish here I could say that I had read all of Mr. Good's testimony. I have not. I think I could find considerable there, judging only by what I read in the public press.

THE CHAIRMAN: That is a question Mr. Good still has to answer, Mr. Francis.

MR. FRANCIS: There are many other leaders. I suggest that if this is the most authoritative statement on behalf

of the cooperative movement that can be made, it does not mean a great deal.

THE CHAIRMAN: The American books are full of that.

MR. FRANCIS: Well, we are dealing with Canadian problems.

THE WITNESS: You will also find something in the evidence of the British commission in 1919 and 1920; an explicit statement of one of the three men who appeared for the cooperatives.

BY MR. FRANCIS:

Q. I suggest to you that this is a Canadian problem, and that the Canadian facts and the Canadian law is much more relevant than the old country law. But that is a matter of argument.

MR. PARKER: Let us not get into an argument about it.

MR. FRANCIS: Of course we are dealing with this report.

Q. One or two other questions, and then I am through. At page 39 you refer to the fact that there are four major canons on taxation. Whose canons are they? A. I surveyed the literature, starting with Adam Smith and coming down to Bastable.

Q. And you base your argument to some extent on those canons? A. Yes.

Q. Is society to remain static because of certain canons? A. Oh, no.

Q. You would be willing to leave open the possibility of improving any branch of society? A. Things change; yes.

Q. So these canons, which go back so far, may have to be reconsidered; you will agree with that? A. Yes, but the reconsideration which you would be compelled to make here is one which would make it one of the objects of the state to destroy those who had wealth, in order to equalize,

is it not?

Q. You just answer the questions, and we will get along. At the top of page 40 you say:

"Any other basis would amount to setting up a state-subsidized religion in which the orthodox would draw their rewards here and now and leave heaven to look after itself."

Have you had any special training in theology? A. No.

Q. Then looking at the next paragraph, which is quite a long one -- would you refer to it, on page 40? Does not a cooperative fulfil all the requirements set out there?

A. It is logically connected with the preceding paragraph; that is, if you have a situation in which people can advance their motives as a ground on which they shall not pay tax, then these other results will follow.

Q. Then just one reference to the bottom of page 41, speaking of cooperatives, where you say:

"They may expand into fields of endeavour in which their net productivity is lower than that of their competitors merely because of this tax advantage."

Do you wish to inferentially admit that at the present time, in the fields in which they are engaged, their productivity is high? A. I would take it for granted that as in cooperatives, so in private business, there are some who are more efficient than others, and that there is probably a good solid block right near the centre; and given an equal level of managerial efficiency I see no reason why a cooperative should not be run just as effectively and efficiently as a private business. But given tax exemptions there is a pressure to expand into fields in which their efficiency in operation would be less, but their money profits would be higher because of their tax exemption; and that, I say, is contrary to the

public interest. That is the argument.

Q. Very well. Then I go to page 42, starting at the bottom of page 41:

"The total net product of their competitors is divided between them and the state. That of the cooperatives is, all of it, left with them, untaxed."

I should like to ask one or two questions about that. In a private enterprise, on what do the returns depend?

A. It is a function of efficiency, and the amount of capital, and the general external situation, and of course many other factors; but those, I think, would be the most important.

Q. I mean the gross returns. Is it the price that the market will bear? A. Are you thinking of the gross profits or the gross sales?

Q. The gross returns. A. The gross profit?

Q. Yes. Is it the price the market will bear? A. That is to assume that they have a monopoly. In that case, where it is a monopoly, yes; it would be so.

Q. In other cases what would it be? A. It would depend, as I say, upon the managerial efficiency, upon the amount of capital they had to apply, and upon the external situation in which they find themselves, of which competition is one of the important factors.

Q. Then I refer to page 43, the last paragraph and the last sentence:

"But, equally, they have a right to expect that, having invested capital in a state-regulated industry, they shall not be pillaged by the granting of tax advantages to competitors whose main difference in position from their own lies in the length of the shareholders' list or in the identity of the persons whose names are on those lists."

The evidence before the Commission is entirely different from that. Do you regard that as the major difference?

MR. FILLMORE: My learned friend says something about the evidence before the Commission being different.

MR. FRANCIS: I will withdraw that.

Q. Do you regard that as the major difference, the length of the shareholders' lists, or the identity of the persons whose names are on those lists? A. Certainly if I had hopes of a continuing tax exemption I would hope and pray for a very long shareholders' list.

Q. That is your answer? A. Yes. I think it would be a very effective help in maintaining that position.

MR. FRANCIS: That is all, thank you.

MR. SCARTH: May I ask one question?

THE CHAIRMAN: Very well.

BY MR. SCARTH:

Q. You spoke of the capital of the cooperatives. What do you regard as their capital? A. The economic assets, no matter how they are raised, whether as contributed under the name of share capital, or deductions of any kind whatever.

Q. Elevator and commercial reserves? A. Elevator and commercial reserves, or patronage dividends, while they are still in the revolving door, and so on.

BY THE CHAIRMAN:

Q. Or share capital? A. Yes.

BY MR. ELLIOTT:

Q. Bank loans? A. It depends upon whether you are talking about gross capital or net capital. I am thinking in terms of the net capital permanently used and owned by those who are in one fashion or another to draw the gain from the enterprise.

Q. Bond issues? A. Yes, I would think so.

BY MR. ARNASON:

Q. Loans from shareholders? A. Yes; that is all part of the same thing.

BY MR. SCARTH:

Q. Do you regard the elevator and commercial reserves as loans from shareholders? I point out to you that I think in most cases those deductions, being elevator and commercial reserves, are held at the discretion of the directors. You have gathered that from the evidence? A. Yes.

Q. Do you regard that as a loan? A. I should rather say they are contributions of capital made in a moment of enthusiasm, whose exact classification is very difficult.

MR. SCARTH: Very well.

THE CHAIRMAN: That is all, thank you.

THE WITNESS: Mr. Chairman, I thank you for your consideration.

---The Commission adjourned to meet on Thursday, May 3, 1945,
at 10 a.m.

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